

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

D

SENATE BILL 443\*  
Pensions & Retirement and Aging Committee Substitute Adopted 6/8/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S443-PCS85304-RC-65

Short Title: NC Museum of Art/Cemetery Comm. Changes.

(Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE NORTH CAROLINA STATE ART SOCIETY, INC., TO  
CREATE A DIRECTOR'S COMMITTEE TO HIRE AND SUPERVISE THE DIRECTOR  
OF THE NORTH CAROLINA MUSEUM OF ART, TO REMOVE THE NORTH  
CAROLINA CEMETERY COMMISSION FROM THE NORTH CAROLINA  
DEPARTMENT OF COMMERCE, AND TO ENDOW THE CEMETERY  
COMMISSION WITH POWERS SIMILAR TO OCCUPATIONAL LICENSING  
BOARDS.

The General Assembly of North Carolina enacts:

**PART I. ELIMINATE NORTH CAROLINA STATE ART SOCIETY, INC.**

**SECTION 1.(a)** Effective October 1, 2012, G.S. 105-275(41) is repealed.

**SECTION 1.(b)** Effective October 1, 2012, G.S. 135-27 reads as rewritten:

**"§ 135-27. Transfers from State to certain association service.**

...

(d) The governing board of any association or organization listed in subsection (a), in its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to cause the employees of such association or organization so employed prior to July 1, 1983, to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such association's or organization's paying all of the employer's contributions or matching funds from funds of the association or organization and on such board's collecting from its employees the employees' contributions at such rates as may be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such association or organization may also be effected to the extent that such board requests; provided, the association or organization shall pay all of the employer's contributions or matching funds necessary for such purposes; and, provided further, such association or organization shall collect from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the Board of Trustees of the Retirement System shall determine, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. The provisions of this subsection shall be fully applicable to the North Carolina Symphony Society, Inc. and the North Carolina State Art Society, Inc.



\* S 4 4 3 - P C S 8 5 3 0 4 - R C - 6 5 \*

1       ...."

2               **SECTION 1.(c)** Effective October 1, 2012, Article 3 of Chapter 140 of the General  
3 Statutes, G.S. 143B-51(7), and Part 15 of Article 2 of Chapter 143B of the General Statutes are  
4 repealed.

5               **SECTION 1.(d)** Effective October 1, 2012, G.S. 143B-53, as amended by Section  
6 1.4(b) of this act, reads as rewritten:

7 **"§ 143B-53. Organization of the Department.**

8       The Department of Cultural Resources shall be organized initially to include the Art  
9 Commission, the Art Museum Building Commission, the North Carolina Historical  
10 Commission, the Tryon Palace Commission, the U.S.S. North Carolina Battleship Commission,  
11 the Sir Walter Raleigh Commission, the Executive Mansion Fine Arts Committee, the  
12 American Revolution Bicentennial Committee, the North Carolina Awards Committee, the  
13 North Carolina Arts Council, the Public Librarian Certification Commission, the State Library  
14 Commission, the North Carolina Symphony Society, Inc., ~~the North Carolina State Art Society,~~  
15 and the Division of the State Library, the Division of Archives and History, the Division of the  
16 Arts, and such other divisions as may be established under the provisions of the Executive  
17 Organization Act of 1973."

18               **SECTION 1.(e)** Effective October 1, 2012, G.S. 140-5.13(b) reads as rewritten:

19       "(b) The Board of Trustees of the North Carolina Museum of Art shall consist of ~~29~~25  
20 members, chosen as follows:

- 21       (1) The Governor shall appoint 13 members, one from each congressional  
22 district in the State in accordance with G.S. 147-12(3b);
- 23       ~~(2) The North Carolina State Art Society, Incorporated, shall elect four~~  
24 ~~members;~~
- 25       (3) The North Carolina Museum of Art Foundation, Incorporated, shall elect  
26 four members;
- 27       (4) The Board of Trustees of the North Carolina Museum of Art shall elect four  
28 members;
- 29       (5) The General Assembly shall appoint four members, two upon the  
30 recommendation of the Speaker of the House of Representatives, and two  
31 upon the recommendation of the President Pro Tempore of the Senate in  
32 accordance with G.S. 120-121;
- 33       (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

34 All regular appointments or elections except those by the General Assembly shall be for terms  
35 of six years, except that each member shall serve until ~~his~~the member's successor is chosen and  
36 qualifies. No person may be appointed or elected to more than two consecutive terms of six  
37 years. All regular appointments by the General Assembly shall be for the then current  
38 legislative term, and no appointee of the General Assembly may be appointed to more than two  
39 consecutive terms of two years."  
40

41 **PART II. CREATE DIRECTOR'S COMMITTEE**

42               **SECTION 2.(a)** G.S. 140-5.15 reads as rewritten:

43 **"§ 140-5.15. Director of Museum of Art; appointment; dismissal; powers and duties;**  
44 **staff.**

45       (a) ~~The Secretary of Cultural Resources-Director's Committee shall appoint elect and~~  
46 supervise the Director of the North Carolina Museum of Art from a list of not fewer than two  
47 nominees recommended by the Board of Trustees of the North Carolina Museum of Art and  
48 may dismiss the Director. The Director's Committee shall evaluate the performance of the  
49 Director and shall determine the Director's compensation within the limitations of available  
50 funding.

1       ~~(b) The Secretary of Cultural Resources may dismiss the Director unless two thirds of~~  
2 ~~the authorized membership of the Board of Trustees shall vote to reverse that action in~~  
3 ~~accordance with the following procedure: Upon dismissal of the Director, the Secretary shall~~  
4 ~~give to the chairman of the Board of Trustees written notice of that action. This notice shall be~~  
5 ~~sent to the chairman of the Board within 10 days after the Secretary makes a final decision on~~  
6 ~~dismissal. The chairman shall promptly communicate the notice of dismissal to all other Board~~  
7 ~~members. Board action to consider reversal of the Secretary's decision shall be taken at a~~  
8 ~~regular or special meeting called pursuant to G.S. 140-5.13(h). Reversal of the Secretary's order~~  
9 ~~of dismissal may be effected only by resolution adopted by an affirmative vote of two thirds of~~  
10 ~~the authorized membership of the Board of Trustees at a meeting held within 30 days after the~~  
11 ~~chairman of the Board receives from the Secretary written notice of dismissal of the Director.~~  
12 ~~All ex officio members of the Board shall be entitled to vote on this question. The failure of~~  
13 ~~two thirds of the authorized membership of the Board of Trustees to vote to reverse the~~  
14 ~~Secretary's order of dismissal within 30 days after the chairman of the Board receives from the~~  
15 ~~Secretary written notice of dismissal of the Director shall be deemed an affirmance of that~~  
16 ~~order by the Board.~~

17       **(b1)** The Director's Committee shall consist of five members chosen as follows:

- 18           (1) The Secretary of Cultural Resources, who shall serve as the chairman of the  
19           Committee.
- 20           (2) The Chair of the Board of Trustees of the North Carolina Museum of Art.
- 21           (3) One member designated by the Board of Trustees of the North Carolina  
22           Museum of Art.
- 23           (4) The President of the Board of Directors of the North Carolina Museum of  
24           Art Foundation, Inc., or other designated representative of the Board.
- 25           (5) One member designated by the Board of the North Carolina Museum of Art  
26           Foundation, Inc.

27       **(b2)** The member of the Director's Committee designated by the Board of Trustees of the  
28 North Carolina Museum of Art and the member designated by the North Carolina Museum of  
29 Art Foundation, Inc., each shall be elected for terms of four years. No person may be elected to  
30 more than two consecutive terms of four years. Four members of the Committee shall  
31 constitute a quorum for the transaction of business.

32       (c) The State-funded portion of the salary of the Director shall be fixed by the General  
33 Assembly in the Current Operations Appropriations Act.

34       (d) The Director shall have the following powers and duties:

- 35           (1) Under the supervision of the ~~Board of Trustees,~~ Director's Committee, to  
36           direct and administer the North Carolina Museum of Art in accordance with  
37           the policies, rules, and regulations adopted by the Board of Trustees;
- 38           (2) To employ such persons as are necessary to perform the functions of the  
39           North Carolina Museum of Art and are provided for in the budget of the  
40           Museum and to promote, demote, and dismiss such persons in accordance  
41           with State personnel policies, rules, and regulations. This paragraph shall not  
42           apply to associate directors and curators;
- 43           (3) To serve as director of collections of the North Carolina Museum of Art;
- 44           (4) To serve as Secretary to the Board of Trustees.

45       (e) The Director, associate directors, and curators shall be exempt from the provisions  
46 of the State Personnel Act. The Board of Trustees shall adopt, subject to the approval of the  
47 Secretary of Cultural Resources, rules and regulations governing the employment, promotion,  
48 demotion, and dismissal of associate directors and curators."

49       **SECTION 2.(b)** G.S. 140-3.15(g) reads as rewritten:

50       "(g) The Board of Trustees shall have a chairman, a vice-chairman, and such other  
51 officers as the Board deems necessary. The chairman shall be designated by the Governor from

1 among the members of the Board. The vice-chairman shall be elected by and from among the  
2 members of the Board. The chairman and vice-chairman shall be chosen for terms of two years  
3 or for so long as they are members of the Board, whichever is the shorter period. The Director  
4 of the North Carolina Museum of Art shall serve as Secretary to the Board of Trustees and shall  
5 attend all ~~meetings, except when the Board is considering issues related to the Director's~~  
6 ~~performance of duties.~~meetings."

### 8 PART III. CHANGES TO CEMETERY COMMISSION

9 SECTION 3.(a) G.S. 65-49 reads as rewritten:

#### 10 "§ 65-49. The North Carolina Cemetery Commission.

11 ~~There is hereby established in the Department of Commerce a~~The North Carolina  
12 Cemetery Commission is established with the power and duty to adopt rules and regulations to  
13 be followed in the enforcement of this Article."

14 SECTION 3.(b) G.S. 65-50 reads as rewritten:

#### 15 "§ 65-50. Cemetery Commission; members, selection, quorum.

16 (a) Membership. – The Cemetery Commission shall consist of nine members. The  
17 General Assembly shall appoint two ~~members,~~members who own or manage or who have  
18 retired from owning or managing a cemetery in North Carolina, one of whom shall be  
19 recommended by the President Pro Tempore of the Senate and one of whom shall be  
20 recommended by the Speaker of the House of Representatives. The Governor shall appoint  
21 seven members as follows:

22 (1) Two members who own or manage cemeteries in North Carolina.

23 (2) Three members who are selected from six nominees submitted by the North  
24 Carolina Cemetery Association.

25 (3) Two public members who have no financial interest in, and are not involved  
26 in management of, any cemetery or funeral related business.

27 (b) Terms. – Four members of the initial Commission shall be appointed for a term to  
28 expire June 30, 1977, and three members shall be appointed for a term to expire June 30, 1976.  
29 At the end of the respective terms of office of the initial members of the Commission, their  
30 successors shall be nominated in the same manner, selected from the same categories and  
31 appointed for terms of four years and until their successors are appointed and qualified. ~~Any~~  
32 ~~appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or~~  
33 ~~disability of a member shall be for the balance of the unexpired term.~~

34 (b1) Any vacancy shall be filled by the authority originally filling that position, except  
35 that any vacancy in appointments by the General Assembly shall be filled in accordance with  
36 G.S. 120-122.

37 (c) Removal. – The appointing authority shall have the power to remove any member of  
38 the Commission appointed by that authority from office for misfeasance, malfeasance and  
39 nonfeasance according to applicable provisions of law.

40 (d) Quorum. – A majority of the Commission shall constitute a quorum for the  
41 transaction of business.

42 (e) ~~Chair, Officers.~~ – At the first meeting of the Commission held after September 1,  
43 1975, the Commission shall elect one of its members as its ~~chairman~~chair and another as its  
44 ~~vice-chairman,~~vice-chair, both to serve through June 30 of the next following year. Thereafter,  
45 at its first meeting held on or after July 1 of each year, the Commission shall elect from its  
46 members a ~~chairman and vice-chairman to serve through June 30 of the next following~~  
47 ~~year,~~president, vice president, and secretary-treasurer with no two offices to be held by the  
48 same person. All officers shall serve a term of one year and shall serve until their successors are  
49 elected and qualified."

50 SECTION 3.(c) G.S. 65-51 reads as rewritten:

#### 51 "§ 65-51. Principal office.

1 The principal office of the Commission shall be in the City of Raleigh, North Carolina.  
2 Notice of all regular and special meetings of the Commission shall be advertised 10 or more  
3 days in advance in at least three newspapers in North Carolina having inter-county circulation  
4 in the State. Each member of the Commission shall receive per diem and allowances in  
5 accordance with ~~G.S. 138-5~~G.S. 93B-5. ~~The administrator~~Members of the  
6 ~~Commission~~Commission and other employees required to attend and legal counsel to the  
7 Commission shall be entitled to actual expenses while attending regular or special meetings of  
8 the Commission held other than in Raleigh, North Carolina. All salaries, compensation, and  
9 expenses of the Commission shall be paid from funds coming to the Commission pursuant to  
10 this Article. In no case shall any salary, compensation, or other expense of the Commission be  
11 charged against the General Fund."

12 **SECTION 3.(d)** G.S. 65-53 reads as rewritten:

13 **"§ 65-53. Powers.**

14 In addition to other powers conferred by this Article, the Cemetery Commission shall have  
15 the following powers and duties:

- 16 (1) ~~The administrator shall be appointed by the Governor upon recommendation~~  
17 ~~of the Cemetery Commission. The compensation of the administrator and~~  
18 ~~such other personnel as is necessary to operate the Commission is subject to~~  
19 ~~the provisions of Chapter 126 of the General Statutes of North Carolina. The~~  
20 ~~Commission is authorized and empowered to~~To employ such staff, including  
21 legal counsel, as may be necessarynecessary to perform its duties and  
22 determine the compensation of its employees.
- 23 (2) To examine a cemetery company's records when a person applies for a  
24 change of control of the company.
- 25 (3) Investigate, upon its own initiative or upon a verified complaint in writing,  
26 the actions of any person engaged in the business or acting in the capacity of  
27 a licensee under this Article. The license of a licensee may be revoked or  
28 suspended for a period not exceeding two years, or until compliance with a  
29 lawful order imposed in the final order of suspension, or both, where the  
30 licensee in performing or attempting to perform any of the acts specified in  
31 this Article has been guilty of:
- 32 a. Failing to pay the fees required herein;
  - 33 b. Failing to make any reports required by this Article;
  - 34 c. Failing to remit to the care and maintenance trust fund, merchandise  
35 trust fund, or preconstruction trust fund the required amounts;
  - 36 d. Making any substantial misrepresentation;
  - 37 e. Making any false statement of a character likely to influence or  
38 persuade;
  - 39 f. A continued and flagrant course of misrepresentation or making of  
40 false promises through cemetery agents or salesmen;
  - 41 g. Violating any provision of this Article or rule promulgated by the  
42 Commission; or
  - 43 h. Any other conduct, whether of the same or a different character than  
44 specified in this section, which constitutes fraud or dishonest dealing.
- 45 (4) ~~In all proceedings under this Article for the revocation or suspension of~~  
46 ~~licenses, the provisions of Chapter 150B of the General Statutes shall be~~  
47 ~~applicable.~~To hold hearings in accordance with the provisions of this Article  
48 and Article 3A of Chapter 150B of the General Statutes to subpoena  
49 witnesses and to administer oaths to or receive the affirmation of witnesses  
50 before the Commission.

1           In any show cause hearing before the Commission held under the  
2           authority of Article 3A of Chapter 150B of the General Statutes where the  
3           Commission imposes discipline against a licensee, the Commission may  
4           recover the costs, other than attorneys' fees, of holding the hearing against all  
5           respondents jointly, not to exceed two thousand five hundred dollars  
6           (\$2,500).

7           (5) ~~At such time as the Commission finds it necessary it may bring an action in~~  
8           ~~the name of the State in the court of the county in which the place of~~  
9           ~~business is located against such person to enjoin such person from engaging~~  
10           ~~in or continuing such violation or doing any act or acts in furtherance~~  
11           ~~thereof. To apply to the courts, in its own name, for injunctive relief to~~  
12           prevent violations of this Article or violations of any rules adopted pursuant  
13           to this Article. Any court may grant injunctive relief regardless of whether  
14           criminal prosecution or any other action is instituted as a result of the  
15           violation. A single violation is sufficient to invoke the injunctive relief under  
16           this subdivision. In any such action, an order or judgment may be entered  
17           awarding such temporary or permanent injunction as may be deemed proper;  
18           provided, that before any such action is brought the Commission shall give  
19           the cemetery at least 20 days' notice in writing, stating the alleged violation  
20           and giving the cemetery an opportunity within the 20-day period to cure the  
21           violation. In addition to all other means provided by law for the enforcement  
22           of a temporary restraining order, temporary injunction, or permanent  
23           injunction, the court shall have the power and jurisdiction to impound and to  
24           appoint a receiver for the property and business of the defendant, including  
25           books, papers, documents, and records appertaining thereto or so much  
26           thereof as the court may deem reasonably necessary to prevent further  
27           violation of this Article through or by means of the use of said property and  
28           business. The Commission may institute proceedings against the cemetery or  
29           its officers, whereafter an examination, pursuant to this Article, a shortage in  
30           the care and maintenance trust fund, merchandise trust fund or mausoleum  
31           and belowground crypts preconstruction trust fund is discovered, to recover  
32           said shortage.

33           (6) Whenever any special additional audit or examination of a licensee's  
34           premises, facilities, books or records is necessary because of the failure of  
35           the licensee to comply with the requirements imposed in this Article or by  
36           the rules and regulations of the Commission, to charge a fee based on the  
37           cost of the special examination or audit, taking into consideration the salary  
38           of any employees involved in the special audit or examination and any  
39           expenses incurred.

40           (7) ~~Promulgate~~To promulgate rules and regulations requiring licensees to file  
41           with the Commission plans and specifications for the minimum quality of  
42           any product sold. The sale of any product for which plans and specifications  
43           required by the rules and regulations have not been filed or sale of any  
44           product of a lesser quality than the plans and specifications filed with the  
45           Commission is a violation of this Article.

46           (8) When the Commission finds that failure by a licensee to maintain a cemetery  
47           properly has caused that cemetery to be a public nuisance or a health or  
48           safety hazard, the Commission may bring an action for injunctive relief,  
49           against the responsible licensee, in the superior court of the county in which  
50           the cemetery or any part thereof is located.

1           (9) To acquire, hold, rent, encumber, alienate, and otherwise deal with real  
2 property in the same manner as a private person or corporation, subject only  
3 to approval of the Governor and Council of State. Collateral pledged by the  
4 Commission for an encumbrance is limited to the assets, incomes, and  
5 resources of the Commission.

6           (10) To purchase, rent, or lease equipment and supplies and purchase liability  
7 insurance to cover the activities of the Commission, its operations, or its  
8 employees."

9           **SECTION 3.(e)** Article 9 of Chapter 65 of the General Statutes is amended by  
10 adding a new section to read:

11 **"§ 65-53.1. Inspectors.**

12           (a) The Commission may appoint one or more agents who shall serve at the pleasure of  
13 the Commission and who shall have the title "Inspector of the North Carolina Cemetery  
14 Commission."

15           (b) To determine compliance with the provisions of this Article and regulations  
16 promulgated under this Article, inspectors may do the following:

17               (1) Enter the office, establishment, or place of business in North Carolina of any  
18 cemetery broker, cemetery company, cemetery management organization,  
19 cemetery sales organization, or preneed sales licensee to inspect the records,  
20 office, establishment, or facility or to inspect the practice conducted or  
21 license of any licensee.

22               (2) Inspect criminal and probation records of licensees and applicants for  
23 licenses under this Article to obtain evidence of their character.

24           (c) Inspectors may serve papers and subpoenas issued by the Commission or any office  
25 or member thereof under authority of this Article and shall perform other duties prescribed or  
26 ordered by the Commission.

27           (d) The Commission may prescribe an inspection form to be used by the inspectors in  
28 performing their duties.

29           (e) Upon request by the Commission, the Attorney General of North Carolina shall  
30 provide the inspectors with appropriate identification cards signed by the Attorney General or  
31 his or her designated agent. In lieu of identification cards, the Commission may design and  
32 issue badges to inspectors."

33           **SECTION 3.(f)** Article 9 of Chapter 65 of the General Statutes is amended by  
34 adding a new section to read:

35 **"§ 65-54.1. Commission records are confidential.**

36           Records, papers, and other documents containing information collected or compiled by the  
37 Commission, its members, or employees as a result of a complaint, investigation, inquiry, or  
38 interview in connection with an application for license, or in connection with a license holder's  
39 professional ethics and conduct, shall not be considered public records within the meaning of  
40 Chapter 132 of the General Statutes. Any notice or statement of charges against a license holder  
41 or applicant, or any notice to a license holder or applicant of a hearing to be held by the  
42 Commission, is a public record even though it may contain information collected and compiled  
43 as a result of a complaint, investigation, inquiry, or interview conducted by the Commission. If  
44 any record, paper, or other document containing information collected and compiled by the  
45 Commission is admitted into evidence in a hearing held by the Commission, it shall then be a  
46 public record within the meaning of Chapter 132 of the General Statutes."

47           **SECTION 3.(g)** G.S. 143B-433(1) reads as rewritten:

48 **"§ 143B-433. Department of Commerce – organization.**

49           The Department of Commerce shall be organized to include:

50               (1) The following agencies:

51                   a. The North Carolina Alcoholic Beverage Control Commission.

- 1 b. The North Carolina Utilities Commission.  
2 c. Repealed by Session Laws 2011-401, s. 1.5, effective November 1,  
3 2011.  
4 d. The North Carolina Industrial Commission.  
5 e. State Banking Commission.  
6 f. Savings Institutions Division.  
7 g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.  
8 h. Credit Union Commission.  
9 i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17,  
10 2004.  
11 j. The North Carolina Mutual Burial Association Commission.  
12 ~~k. North Carolina Cemetery Commission.~~  
13 l. The North Carolina Rural Electrification Authority.  
14 m. Repealed by Session Laws 1985, c. 757, s. 179(d).  
15 n. North Carolina Science and Technology Research Center.  
16 o. Repealed by Session Laws 2011-145, s. 14.6(g), effective July 1,  
17 2011.  
18 p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2,  
19 2010.  
20 q. Economic Development Board.  
21 r. Labor Force Development Council.  
22 s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective  
23 September 30, 2000.  
24 u. Navigation and Pilotage Commissions established by Chapter 76 of  
25 the General Statutes.  
26 v. Repealed by Session Laws 1993, c. 321, s. 313b."

27 **SECTION 3.(h)** Section 14.7(a) of S.L. 2011-145 reads as rewritten:

28 "**SECTION 14.7.(a)** In consultation with the Fiscal Research Division, the Department of  
29 Commerce and the ABC Commission, State Banking Commission, Credit Union Division,  
30 ~~Cemetery Commission~~, Utilities Commission, Utilities Commission Public Staff, and the Rural  
31 Electrification Authority shall study the following: (i) the types of services provided by the  
32 Department of Commerce to each of the agencies during each fiscal year; and (ii) formulas or  
33 methods to be used to determine the costs of the services, including the advantages and  
34 disadvantages of each formula or method. The Department of Commerce and each of the  
35 agencies shall prepare a joint recommendation as to which formula or method to determine the  
36 costs of the services should be used. In addition, the Department of Commerce and each of the  
37 agencies shall develop a memorandum of understanding that details the services to be provided  
38 by the Department of Commerce during each fiscal year."

39 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes  
40 law.