SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1998

1997 GENERAL ASSEMBLY
1998 REGULAR SESSION

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
DECEMBER 1998

December, 1998

To the Members of the 1997 General Assembly:

This publication contains summaries of substantive legislation enacted by the General Assembly during the 1998 Regular Session and the Extra Session of the 1997 General Assembly, except for local bills. Significant appropriations matters related to the subject area specified are also included. For an in-depth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also includes a listing of legislative, independent and agency studies. A bill/session law index listing the page number of each summary is at the end of the publication.

This document is the result of a combined effort by the following alphabetical listing of staff members of the Research Division: Linda Attarian, Cindy Avrette, Brenda Carter, Karen Cochrane-Brown, Bill Gilkeson, George Givens, Susan Hayes, Hannah Holm, Tim Hovis, Jeff Hudson, Shirley Iorio, Robin Johnson, Linwood Jones, Sara Kamprath, Jo McCants, Giles Perry, Barbara Riley, Walker Reagan, Steve Rose, Ebher Rossi, John Young and Richard Zechini. Kory Goldsmith and DeAnne Mangum of the Research Division served as editors of this document. Also contributing were Martha Harris of the Bill Drafting Division and Martha Walston of the Fiscal Research Division. The specific staff members contributing to each subject area are listed directly below the main heading for each area. The staff members' initials appear after their names and after each summary they contributed. If you would like further information regarding any legislation in the various summaries, please contact the Research Division Office at (919) 733-2578.

It is hoped that this document will provide a useful source of information for the members of the General Assembly and the public in North Carolina.

Yours ~~truly~~,

Terrence D. Sullivan
Director of Research

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AGRICULTURE

[George Givens (GG), Hannah Holm (HH), Barbara Riley (BR)]

Enacted Legislation

Agriculture and Forestry

Poultry Composting Tax Credit, S.L. 1998-134 (HB 1617). See **TAXATION.**

Horse Promotion Assessment, S.L. 1998-154 (HB 1529) adds a new Article 69 to Chapter 106 of the General Statutes providing for a referendum to allow horse owners to assess themselves, through a levy on commercial horse feed, in order to provide funds to the North Carolina Horse Council ("Council") to promote the interests of the horse industry.

The Council is authorized to conduct the referendum among horse owners to determine if the assessment should be levied. Notice shall be provided to horse owners by the Council through press releases sent to at least 10 daily and 10 weekly or biweekly newspapers of general circulation and by postings in every feed store identified by the Council. To take effect, the assessment must be approved by a majority of votes cast in the referendum. The amount of the assessment may not exceed $2 per ton of commercial horse feed and shall not extend for a period of more than three years. The Council shall determine the exact amount and period of the levy.

If approved, the North Carolina Department of Agriculture and Consumer Services shall notify all commercial feed dealers and distributors of the assessment and shall provide forms for reporting the assessment. The assessment shall be remitted to the Department with the inspection fee imposed under the Commercial Feed Law, Article 31C of Chapter 106 of the General Statutes. Anyone who purchases commercial horse feed may demand a refund of the assessment by writing the Horse Council within one year of buying the feed and providing proof of purchase.

The Department shall remit funds to the North Carolina Horse Council at least quarterly. These funds may be used by the Horse Council to promote the interests of the horse industry, including administrative expenses to carry out these functions. The act became effective September 24, 1998. (BR)

Forester Registration, S.L. 1998-157 (HB 577) amends Chapter 89B of the General Statutes to mandate that all persons using the title "Forester" or Registered Forester" be registered by the State Board of Registration for Foresters (Board). Current law provides only for voluntary registration and makes it unlawful for any person who is not registered to use the title "registered forester". The act also raises the standards for forester registration and makes a number of other changes to Chapter 89B. These changes include:

(1) Addition of a requirement that an applicant for registration, except for a forester who has been registered in good standing as of January 1, 1998, or who is an

"urban forester" (newly defined as a person engaging in forestry practice in an urban setting), must pass a comprehensive written exam as well as meet the other requirements to become a forester. Currently, an applicant must: (i) have either a bachelors or higher degree in a forestry curriculum and two years of experience; or (ii) pass an exam that shows knowledge approximating that obtained through graduation from a four-year forestry curriculum and five years of experience.

(2) An increase in the number of years of forestry experience, from five to six years, for an applicant without a bachelors or higher degree in forestry. The act also provides that an Associate Applied Science degree in a curriculum approved by the State Board of Registration of Foresters is the equivalent of one year of experience; completion of the junior year of an approved forestry curriculum is the equivalent of two years of experience; and completion of the senior year is the equivalent of three years of experience.

(3) Provision for the registration of an applicant who: (i) has practiced "urban forestry" for six years immediately prior to January 1, 1998; (ii) is a North Carolina resident; and (iii) applies to the Board before June 30, 1998, for registration and submits a sworn affidavit showing experience and education equivalent to that of a forester.

(4) Allowing the Board to issue a forester-in-training certificate to an applicant who has graduated with a bachelors or higher degree in forestry but has not yet passed the test or gained the two years experience.

(5) Allowing the State Board of Registration for Foresters to set fees, subject to a statutory maximum.

(6) Allowing the Board to limit an applicant to three attempts to take and pass the examination.

(7) Addition of a continuing education requirement that must not exceed 12 hours per year.

(8) Requiring each consulting forester to file annually with the Board affidavits of compliance with the requirements of Chapter 89B. A consulting forester is allowed to practice forestry management, appraisal, development, marketing, protection, and utilization for the benefit of the public on a fee, contractual, or contingency basis.

(9) Establishing that a violation of the Chapter is a Class 3 misdemeanor (1-10 days community penalty, fine of up to $200, if no prior record).

The act becomes effective January 1, 1999. (BR)

Trans. Ag. Products Exempt/Temp. Rule Auth., S.L. 1998-165 (SB 1285) exempts the transport of agricultural products under certain conditions from federal regulations governing the transport of hazardous materials and authorizes the Soil and Water Conservation Commission to adopt temporary rules to implement the Conservation Reserve Enhancement Program until other rules necessary to implement the program become effective.

Transportation of Agricultural Products: S.L. 1998-165 exempts the transport of agricultural products over local roads between fields of the same farm from federal regulations governing the transport of hazardous materials. Class 2 materials (flammable, compressed, and poisonous gases) are excluded from the exemption. Federal regulations

permit this exemption if the exemption is authorized by a State statute or regulation in effect by October 1, 1998.

S.L. 1998-165 also provides that the transport of agricultural materials to and from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from federal hazardous material regulations regarding providing and maintaining emergency response information and training for handlers of hazardous materials, as long as each vehicle carries less than 16,094 pounds of ammonium nitrate fertilizer and less than 502 gallons (liquid) or 5,070 pounds (solid) of any other agricultural product. Federal regulations permit this exemption if the exemption is authorized by a State statute or regulation in effect by July 1, 1998.

Conservation Reserve Enhancement Program: S.L. 1998-165 authorizes the Soil and Water Conservation Commission to adopt temporary rules to implement the Conservation Reserve Enhancement Program until all rules necessary to implement the program become effective as either temporary or permanent rules.

This act became effective September 30, 1998. (HH, GG)

Swine Integrator Register Growers, S.L. 1998-188 (HB 1480). See **ENVIRONMENT AND NATURAL RESOURCES**.

Tobacco Settlement Payments, S.L. 1998-191 (HB 1248) amends Article 1 of Chapter 143 by adding a new section G.S. 143-16.4 establishing the Settlement Reserve Fund. Federal funds provided to the State as part of federal legislation implementing a settlement between tobacco companies and the State, and funds paid to the State pursuant to a tobacco litigation settlement agreement or final court judgment shall be credited to the fund unless otherwise prohibited by federal law or otherwise distributed pursuant to any settlement. The act also provides that it is the intent of the General Assembly to enact appropriate tax relief for financial assistance payments that may be later enacted by Congress for tobacco farmers and to monitor the status of tobacco litigation and act to protect the interests of North Carolina tobacco farmers and other North Carolina citizens who depend on tobacco for their livelihoods. The act became effective October 21, 1998. (BR)

Arbitration of Seed Claims, S.L. 1998-210 (HB 1055) amends the existing defective seed complaints process. The act repeals the existing law allowing a farmer to file a complaint with the Commissioner of Agriculture (Commissioner) and have the Department of Agriculture (Department) conduct an investigation to determine the facts of the matter and, when appropriate, recommend money damages as a result of the seed failure. Instead, the act requires arbitration of seed claims.

Persons who believe they have been damaged by the failure of seeds to perform as labeled must file a complaint with the Commissioner of Agriculture and have the matter considered by an arbitration committee prior to the filing of a legal action. The complaint must be filed in time to allow inspection of the affected seeds, crops, or plants. The person must pay a $100 filing fee to offset the expenses of the arbitration committee. A copy of the complaint shall be sent to the dealer by certified mail and the dealer may file an answer within 10 days of receipt of the complaint.

In order to trigger the mandatory arbitration requirement, the seed dealer must place on the label notice that arbitration is required under the seed laws of some states as a precondition to maintaining a legal action. A seed dealer against whom an action has been brought may also request an investigation by the arbitration committee. A filing fee of $100 must accompany the request for an investigation.

The arbitration committee shall consist of five members appointed by the Commissioner. The Director of the Agricultural Research Service at NCSU, the Director of the North Carolina Cooperative Extension Service, and the President of the North Carolina Seedsmen's Association shall each recommend one member for appointment. Of the two other members, one shall be a farmer who is not connected to seed sales and one shall be an employee of the Department of Agriculture.

When conducting an investigation, the arbitration committee may: (1) examine the buyer about how the seed was used; (2) examine the seller about how the seed was packaged, labeled, and sold; (3) grow a sample of the seed; (4) hold informal hearings; (5) seek evaluations from experts in allied disciplines; and (6) inspect the affected site. No investigation shall be made by less than the whole committee unless the chair of the committee directs so in writing. The record of the committee's activities shall be kept on file at the Department. All findings shall be transmitted to the parties within 30 days of completion of the arbitration. The findings shall be binding on the parties to the extent that they have agreed to be bound in any contract governing the purchase of the seed.

G.S. 106-277.33 provides for the filing of a legal action after the arbitration proceedings are completed. The report of arbitration may be introduced as evidence of the facts and the court has discretion to use the committee's findings and conclusions of law and recommendations, as the court deems appropriate. The court also may consider any finding with respect to the effect of a failure to cooperate with the arbitration and the effect of any delay in the proceedings on the arbitration committee's ability to determine the facts.

The act became effective July 1, 1998. (BR)

Farmland Preservation Pilot Program, S.L. 1998-212, Sec. 13 (SB 1366, Sec. 13) appropriates funds to the North Carolina Farmland Preservation Trust Fund to purchase agricultural conservation easements. The Department of Agriculture and Consumer Services shall report to the Joint Legislative Commission on Governmental Operations by March 15, 1999, on the results of the pilot program. The act became effective July 1, 1998. (BR).

Duplin Fair & Exhibition Center Funds, S.L. 1998-212, Sec. 13.1 (SB 1366, Sec. 13.1) provides that a portion of the funds appropriated to the Department of Agriculture and Consumer Services for a Fair and Exhibition Center in Duplin County may be used for an agricultural center that includes fairgrounds, livestock exhibition facilities, multipurpose facilities, and offices for allied federal and State agencies. The appropriation may be used for professional services to design, finance, and procure these facilities. The act became effective July 1, 1998. (BR)

Special Reserve Funds for Certain Agricultural Centers, S.L. 1998-212, Sec. 13.2 (SB 1366, Sec. 13.2) adds a new section to Chapter 106 of the General Statutes creating two new special revenue funds within the North Carolina Department of Agriculture and Consumer Services: (1) the Eastern North Carolina Agricultural Center Fund; and (2) the Southeastern North Carolina Agricultural Center Fund. Each fund shall consist of receipts from the sale of naming rights to any facility located at the individual Agriculture Center. Monies in each fund shall be used only to promote, improve, repair, maintain, or operate each respective Agriculture Center. The act became effective July 1, 1998. (BR)

Umstead Act Exemption for Department of Agriculture and Livestock Facilities, S.L. 1998-212, Sec. 13.3 (SB 1366, Sec. 13.3) amends G.S. 66-58(b) and adds agriculture centers or livestock facilities operated by the North Carolina Department of Agriculture and Community Services to those agencies that are exempt from the provisions of law making it unlawful for State agencies to engage in the sale of goods. The act became effective July 1, 1998. (BR)

Guidelines for Grants for Local Agricultural Fairs, S.L. 1998-212, Sec. 13.4 (SB 1366, Sec. 13.4) directs the Department of Agriculture and Consumer Services to adopt guidelines for the disbursement of funds appropriated for the 1998-1999 fiscal year for grants to local agriculture fairs. The act became effective July 1, 1998. (BR)

Animal Waste Management Equipment Grants for Family-owned Dairies, S.L. 1998-212, Sec. 13.5 (SB 1366, Sec. 13.5) directs that funds appropriated to the Department of Agriculture and Community Services (Department) for animal waste management equipment grants to farmers of family-owned dairies shall be used only for the purpose of transporting, storing, or distributing animal waste. The funds may not be used to enlarge or maintain anaerobic lagoons. The Department shall adopt guidelines for the disbursement of grant funds. Recipients must enter into a contract with the Department that contains the provisions of the loan. The contract shall provide that the recipient shall continue to operate at the current level of production for five years. If the number of cows decreases during that time, the recipient shall repay the Department on a prorated basis. Only dairies with fewer than 300 cows that were in operation prior to January 1, 1998 are eligible for the grants. The act became effective July 1, 1998. (BR)

Assistance for Small Family Farms, S.L. 1998-212, Sec. 13.6 (SB 1366, Sec. 13.6) directs that $50,000 of the funds appropriated to the Department of Agriculture and Consumer Services be used to provide assistance to farmers operating small, family farms. The Department shall report on the use of the funds, the number and location of farms assisted, and other information to the Joint Legislative Commission on Governmental Operations by March 1, 1999. The act became effective July 1, 1998. (BR)

Grants for Local Farmers' Markets, S.L. 1998-212, Sec. 13.7 (SB 1366, Sec. 13.7) directs the Department of Agriculture and Consumer Services to adopt guidelines for disbursing grants to local farmer's markets for the purpose of promoting or selling farm

products produced by local small, family-owned farms. The act became effective July 1, 1998. (BR)

Loan Program for Small, Family-owned Farms, S.L. 1998-212, Sec. 13.8 (SB 1366, Sec. 13.8) provides that the funds appropriated to the North Carolina Rural Rehabilitation Corporation shall be used for loans to small, family-owned farms in financial difficulty. Priority for loans shall be extended for: (1) dairy farms with fewer than 300 dairy cows; (2) turkey farms that have lost contracts with integrators for reasons other than environmental violations; (3) swine farms with fewer than 500 swine; and (4) peach or apple farms that have lost 50% or more of their fruit crop due to frost or freeze damage. Loans terms shall not exceed 20 years and shall be made in accordance with the N.C. Rural Rehabilitation Corporation lending requirements. The Department of Agriculture and Consumer Services shall adopt rules to implement the loan program. The act became effective July 1, 1998. (BR)

Lewis Steam Powered Sawmill Relocation, S.L. 1998-212, Sec. 13.9 (SB 1366, Sec. 13.9) allows the Department of Agriculture and Consumer Services to use funds available for the State Fair for the cost of relocating the Lewis Steam Powered Sawmill from Pitt County to the State Fairgrounds. The funds may also be used for restoring and operating the sawmill. The act became effective July 1, 1998. (BR)

Poultry/Ratite Dealers Registration, S.L. 1998-212, Sec. 13.10 (SB 1366, Sec. 13.10) requires all dealers of live poultry and ratites, other than those who sell birds on their own premises that were raised on their own premises, to register with the North Carolina Department of Agriculture and Consumer Services (Department). The current poultry laws only require hatching egg dealers and chick dealers to obtain a license from the Department. In addition to the registration requirement, the act provides that specialty market operators may not knowingly allow an unregistered poultry or ratite dealer to operate on the premises more than 10 days after the operator has received notice from the Department of the dealer's unregistered status. Live poultry and ratite dealers are further required to keep records as required by the Department. Persons who fail to comply with the act are guilty of a Class 2 misdemeanor and are subject to civil penalties of up to $5,000. The substantive portions of the act become effective January 1, 1999. (BR)

North Carolina Museum of Forestry, S.L. 1998-212, Sec. 14.1 (SB 1366, Sec. 14.1). See **ENVIRONMENT AND NATURAL RESOURCES.**

Land Loss Prevention Project Report, S.L. 1998-212, Sec. 15.12 (SB 1366, Sec. 15.12). See **STATE GOVERNMENT.**

NC Coalition of Farm and Rural Families Report, S.L. 1998-212, Sec. 15.13 (SB 1366, Sec. 15.13). See **STATE GOVERNMENT.**

Use Of Federal Conservation Reserve Enhancement Program Funds, S.L. 1998-221, Part III (HB 1402, Part III) provides that for nonpoint source pollution control practices

that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the Agriculture Cost Share Program will be limited to 75% of the cost of the conservation practice. The remainder of the cost will be paid from the Conservation Reserve Enhancement Program, other federal or State funds, or the assisted farmer. This part became effective November 5, 1998. (HH, GG)

Wildlife

Statewide Beaver Damage Control Program Funds, S.L. 1998-212, Sec. 14.18 (SB 1366, Sec. 14.18) extends statewide the Beaver Damage Control Program. The Beaver Damage Control Advisory Board shall report by March 15 of each year to the Wildlife Resources Commission, the Senate and House Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division on the results of the program during the preceding year. Should a conflict arise between this Section and the General Statutes regulating trapping, G.S. 113-291.6(a) and (b), Section 14.18 shall prevail. Counties that wish to participate in the program for a given fiscal year must provide written notice and commit $4,000 in local funds by September 30 of that year. This section also codifies Section 69 of Chapter 1044 of the 1991 Session Laws which created the Beaver Control Pilot Program. The act became effective July 1, 1998. (BR)

Studies

Independent Studies, Boards, Etc. Created, Continued or Changed

Commission on Small Family Farm Preservation, S.L. 1998-223, Secs. 3-8 (HB 1472, Secs. 3-8) creates the Commission on Small Family Farm Preservation (Commission) in the General Assembly and directs the Commission to study:

- land-use and population trends in North Carolina;
- factors influencing the declining number of small family farms in North Carolina, including State and federal taxes;
- measures to enhance the economic viability of small family farms;
- ways to enhance and promote small family farmers' role in environmental protection;
- the feasibility and desirability of various farmland preservation mechanisms;
- the conclusions of other studies on small family farm preservation; and
- ways the Department of Agriculture and Consumer Services, Department of Environment and Natural Resources, and the Department of Commerce can cooperate to preserve environmentally sustainable and economically viable small family farms.

The Commission shall include six members of the General Assembly, two farmers, and representatives from:

- the North Carolina State Grange;
- the North Carolina Farm Bureau Federation;
- the Department of Agriculture and Consumer Services;

- the Department of Environment and Natural Resources;
- the Department of Commerce;
- the School of Agriculture and Life Sciences at North Carolina State University;
- the School of Agriculture at North Carolina Agricultural and Technical State University;
- the School of Design at North Carolina State University;
- the School of Regional Planning at the University of North Carolina at Chapel Hill;
- the North Carolina Environmental Defense Fund; and
- the Southern Environmental Law Center.

The Commission must report to the 1999 Regular Session of the General Assembly and also prior to the convening of the 2000 Regular Session of the 1999 General Assembly.

The sections became effective November 5, 1998. (HH)

Expand Structural Pest Control Committee, S.L. 1998-224 (SB 1428) amends G.S. 106-65.23 to expand the Committee to include two additional members appointed by the General Assembly, one on the recommendation of the Speaker of the House of Representatives and one on recommendation of the President Pro Tempore of the Senate. The act also increases the number of members of the committee necessary to constitute a quorum from four to five. Members of the General Assembly may not serve on the Structural Pest Control Committee. The act became effective November 5, 1998. (HH, GG)

Referrals to Departments, Agencies, Etc.

Sustainable Oyster Aquaculture Study, S.L. 1998-212, Sec. 11.11 (SB 1366, Sec. 11.11) allocates a portion of the funds appropriated to the Board of Governors of The University of North Carolina to the Institute of Marine Sciences at the University of North Carolina at Chapel Hill to study the potential for sustainable oyster aquaculture of several species of oyster. Progress reports are to be made to the Joint Legislative Commission on Seafood and Aquaculture, the Environmental Review Commission, the Marine Fisheries Commission, and the Fiscal Research Division on January 1 and July 1 of each year until the project is complete. A final report shall be submitted to the above entities on the completion of the study. The act became effective July 1, 1998. (BR)

CHILDREN AND FAMILIES

[Linda Attarian (LA), Jo McCants (JM), John Young (JY)]

Enacted Legislation

Child Health Insurance, S.L. 1998-1EX (SB 2), as amended by S.L. 1998-212, Sec. 12.12c (SB 1366, Sec. 12.12c) establishes a North Carolina plan for health insurance for children to be provided under the federal Title XXI program. State funds will be used to match federal funds to finance the program. The State Child Health Insurance Program (Program) will be administered by the Division of Medical Assistance under the Department of Health and Human Services (DHHS). The North Carolina Teachers' and Employees' Health Plan will administer the benefits and claims processing. Local Departments of Social Services will determine eligibility. The start date was October 1, 1998.

Eligibility. Uninsured children under the age of 19 with a family income at or below 200 percent of the federal poverty level (FPL) are eligible to enroll in the Program. A child must not have been covered under any private or employer-sponsored creditable health insurance plan since April 1, 1998. After April 1, 1999, applicants must have been uninsured for 60 days prior to application. A child also must be ineligible for Medicaid, Medicare, or other federal government sponsored insurance. Enrollment is continuous for 12 months unless the child receives other insurance.

Purchase of extended coverage. An enrollee in the Program who loses eligibility due to an increase in family income above 200 percent of the FPL and up to 225 percent of the FPL may purchase, at full premium cost, continued coverage under the Program for a period not to exceed one year beginning on the date the enrollee becomes ineligible under the Program's income requirements.

Benefits package. The benefits package is equivalent to the NC Teacher's and State Employees' Comprehensive Major Medical Plan benefits, plus Medicaid-equivalent benefits for Special Needs Children, dental, optical, and hearing.

Cost sharing. Families who fall between 150 percent and 200 percent of the FPL must pay an annual enrollment fee of $50.00 for one child and $100.00 for two or more children. In addition, families above 150 percent of the FPL are required to make co-payments of $6.00 for each outpatient prescription; $5.00 for non-preventative physician, clinic, optometry, hospital outpatient visits; and $20.00 for unnecessary emergency room use. Total annual aggregate cost sharing for all children in a family receiving Program benefits may not exceed five percent of the family's annual income.

Private coverage. Program funds may be used to pay for actuarially equivalent private coverage if the cost of the coverage is the same or less than the cost under the Plan.

School-based health center restrictions. Except for immunization, no program funds may be used to reimburse medical services performed in school-based health clinic settings.

Joint Legislative Health Care Oversight Committee membership. The act increases the membership of the Joint Legislative Health Care Oversight Committee from 14 to 18 members and charges the Committee with the responsibility to review the implementation of the Program.

Commission on Children with Special Health Care Needs. The act creates the Commission on Children with Special Health Care Needs (Commission). See "Studies" for the Commission's purpose and membership.

Tax credit. The act adds a refundable tax credit for families with income up to $100,000 who purchase health insurance for their child/children to the State's tax code. The credit may not exceed the amount of health insurance premium the taxpayer paid during the taxable year.

Studies. DHHS must identity all Department programs that provide some or all of the services provided by the State Health Insurance Program for Children. The Office of State Budget and Management must determine whether any expenditures or services currently provided by or funded in part by non-State agencies or State agencies other than DHHS could be provided under the State Health Insurance for Children. Both agencies shall report their findings to the House Appropriations subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources no later than March 1, 1999. This section, which is contained in Sec. 12.12 of S.L. 1998-212, became effective July 1, 1998.

Effective date: The non-appropriations related provisions of the act became effective October 1, 1998. See also "Studies" under this subject. (LA)

DHHS Report on Cost Effectiveness of Public and Private Placement Agencies, S.L. 1998-212, Sec. 5(k) (SB 1366, Sec. 5(k)) directs the Department of Health and Human Services, Division of Social Services (Division) in consultation with the North Carolina Association of County Directors of Social Services and licensed private adoption agencies, to develop guidelines for awarding funds to licensed adoption agencies for successful adoptive placement of children described in G.S. 108A-50 or foster care children. It also requires the Division to evaluate the cost effectiveness of adoptive placement of children in the custody of the county departments of social services. The Division shall report the results to the House and Senate Appropriations Committees on Human Resources by May 1, 1999. This section became effective July 1, 1998. (JY)

Repeal Sunset/Child Support Requirement, S.L. 1998-17 (SB 1182) repeals the June 30, 1998, sunset for many of the welfare reform provisions in S.L. 1997-433. The 1996 federal welfare reform law required states to adopt a number of laws and procedures to enhance enforcement of child support. The 1997 General Assembly enacted Sec. 11.3 of S.L. 1997-433 to comply with federal requirements. However, there were a number of questions about the constitutionality of some of the federal requirements. S.L. 1997-433 directed the Attorney General to explore the feasibility of filing a lawsuit against the United States challenging the federal government's authority to require the State to comply with the federal child support enforcement requirements. To enable the General Assembly to revisit the issue, many of the welfare reform provisions of S.L. 1997-433

expired June 30, 1998. S.L. 1998-17 repeals that sunset. The act became effective June 30, 1998. (JY)

Voluntary Admission/Family Unit, S.L. 1998-47 (SB 962) amends G.S. 122C-211 regarding voluntary admissions of individuals in need of treatment for mental illness or substance abuse. The amendments allow the family unit of a parent in need of substance abuse treatment to accompany the parent into treatment in order to address the needs of the whole family. The family unit is defined as a parent and the parent's dependent children under the age of three. The provision only applies to 24-hour substance abuse facilities that are able to provide, either directly or by contract, treatment, habilitation or rehabilitation services that meet the specific needs of the family unit. The act became effective October 1, 1998. (LA)

Continuous Medicaid Coverage for Categorically Needy Families with Children, S.L. 1998-212, Sec. 12.7 (SB 1366, Sec. 12.7) amends section 11.11 of S.L. 1997-443 to provide for 12 months of continuous Medicaid enrollment to categorically needy families with children irrespective of increases in family income or assets that would otherwise cause the children to lose their Medicaid eligibility. Medicaid benefits are available for certain categories of people and are based on specific financial criteria. Currently, no resource test is applied to determine the eligibility of categorically needy families with children, but in most cases these families must report any changes in the family's income that would affect their eligibility for benefits. An exception to this rule is that services to eligible pregnant women continue throughout the pregnancy irrespective of changes in the family's income. Also, Medicaid coverage for adoptive children with special or rehabilitative needs is available regardless of the adoptive family's income.

As of February 1, 1999, categorically needy families with children who qualify for Medicaid based on the family's income will not be required to report any changes in income for one full year after enrolling. The children will remain enrolled for one year despite any increases in family income that could effect their eligibility. This provision applies to categorically needy children up to the age of 19, including children in families receiving cash assistance, foster care assistance payments, SSI payments, State and county Special Assistance payments, or supplemental assistance programs to visually handicapped children.

The Department of Health and Human Services is directed to study the affect of these changes on the Medicaid Program and the Health Insurance Program for Children and make an interim report to the House Subcommittee on Human Resources and Senate Appropriations Committee on Human Resources by October 1, 1999, and a final report by January 1, 2000. The continuous enrollment provision becomes effective January 28, 1999, and all other provisions became effective July 1, 1998.(LA).

Child Welfare System Pilots, S.L. 1998-212, Sec. 12.29D (SB 1366, Sec. 12.29D) directs the Department of Health and Human Services (DHHS), Division of Social Services, to work with local departments of social services to develop a plan and implement a dual response system for child protection in two to five demonstration areas during 1998-99. The pilots shall have a dual response system in which: 1) local child

protective services and law enforcement work together as coinvestigators in serious abuse cases; and 2) local departments of social services respond to reports of child abuse or neglect with a family assessment and services approach. DHHS shall collect specified data and submit a progress report to the House and Senate Appropriations Committees on Human Resources no later than April 1, 1999. DHHS may implement these systems if non-state funds are available. This section became effective July 1, 1998. (JY)

Early Childhood Education and Development Initiatives Reform, S.L. 1998-212, Sec. 12.37B (SB 1366, Sec. 12.37B) amends Part 10B of Article 3 of Chapter 143B (Smart Start) by strengthening the North Carolina Partnership (Partnership) to approve local partnerships' plans, monitor their contracts, and implement sanctions in the event of poor performance. The amendments change the composition of the Partnership's Board (Board) by reducing the total number of members from 38 to 25; specifying the categories of appointees and the number of representatives in each category; authorizing the Governor to appoint the Board Chair; prohibiting legislators from serving as members; permitting the Partnership to establish a nominating committee and a member attendance policy with sanctions for nonattendance; directing the Partnership to end the terms of all existing board members; and providing for the appointment of a new 25-member board. As a condition of receiving State funds, the Partnership must amend its Articles of Incorporation or bylaws to terminate the terms of all existing members of the Board so new members may be appointed. The amendments also establish a conflict of interest policy for Board members, direct the Partnership to establish a policy on local board membership; and authorize the Partnership to make exceptions to the requirement that all local partnerships must be new 501(c)(3) organizations. The Partnership shall hold local partnerships accountable for the financial and programmatic integrity of their programs and services. If the Partnership determines a local partnership is not fulfilling its mandate, the Partnership may suspend funds to the local partnership and may also assume the managerial responsibilities for the program until the local partnership shows it is in compliance. Legislators may not serve as members of local partnerships and local partnerships must agree to adopt procedures that are comparable to this State's open meetings and public records laws. The amendments change the uses for Smart Start funds by increasing the thresholds for mandatory competitive bidding, and requiring fidelity bonding if contractors receive more than $100,000 (excluding child care subsidy funds). The Partnership must submit a regionalization plan to the House and Senate Appropriation Committees by April 15, 1999. This section became effective July 1, 1998. See also "Studies". (JY)

Healthy Mothers/Healthy Children Pilot Program, S.L. 1998-212, Sec. 12.43 (SB 1366, Sec. 12.43) allows the Department of Health and Human Services (DHHS) to initiate a grant program in up to six local health departments. Grants may be used to: (1) expand preventive health services and reduce or control health risk factors for women of childbearing age; (2) reduce infant mortality by preventing high-risk pregnancies, improving preconceptional health, improving access to prenatal care, reducing prematurity, and improving survival rates of preterm and other high-risk infants; (3) reduce infant mortality and morbidity among children and youth; and (4) enhance the

health and functional status of children and youth with chronic and handicapping conditions. Local health departments must report expenditures by program and report on the administrative, programmatic, and health outcome benefits realized by providing localities greater flexibility. DHHS shall report to the House and Senate Appropriations Committees on Human Resources by April 1, 1999. This section became effective July 1, 1998. (JY)

Maternal Outreach, S.L. 1998-212, Sec. 12.45 (SB 1366, Sec. 12.45) directs the Department of Health and Human Services (DHHS) to ensure that local communities that receive State funds for intensive home visiting programs, including the Olds and Healthy Families America models, collect and report data that will allow a valid and reliable evaluation of the long-term effectiveness of the programs. DHHS shall design a standard reporting system providing information on: (1) preterm delivery; (2) low birthweight; (3) infant morbidity and mortality; (4) childhood injuries; (5) childhood injuries; (6) child maltreatment; (7) immunizations; (8) mental development and behavioral problems; (9) subsequent maternal pregnancy; (10) maternal educational achievement and labor force participation; and (11) use of public assistance programs. DHHS is to report to the House and Senate Appropriations Committees on Human Resources by February 1, 1999. This section became effective July 1, 1998. (JY)

Improve Immunization Program Accountability, S.L. 1998-212, Sec. 12.52 (SB 1366, Sec. 12.52) directs the Department of Health and Human Services (DHHS), Division of Women's and Children's Health, to develop and implement strategies to improve the accountability in the Immunization Program. By April 1, 1999, DHHS shall report on the following options: (1) enhancing the current doses administered reporting system; (2) converting to a vaccine replacement system; (3) collecting child-specific immunization and program eligibility information; (4) expediting implementation of the NC Immunization Registry; (5) conducting site visits on 20% of private providers annually; (6) sanctioning providers who fail to comply with requirements; and (7) identifying means to verify and reduce wastage. DHHS may make temporary rules. Immunization providers shall be responsible for the cost of vaccine wasted due to failure to properly store, handle or rotate inventory. This section became effective July 1, 1998. (JY)

Fund for Displaced Homemakers, S.L. 1998-219 (SB 475) establishes within the Department of Administration the North Carolina Fund for Displaced Homemakers (Fund). The Fund will be administered by the North Carolina Council for Women (Council). Recipients of grant funds must fulfill the Council's criteria. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenue credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.

The act also requires that a cost of $20.00 be assessed against any person who files a final action for absolute divorce in the district court. The $20.00 collected by the clerk is remitted to the State Treasurer for deposit to the Fund. The act became effective December 1, 1998, and applies to final actions for divorce filed on and after that date. (JM)

Adoption and Safe Families Act, S.L. 1998-229 (HB 1720) amends various sections of the current law to comply with The Adoption and Safe Families Act of 1997 (P.L. 105-89). The changes are based on the intent of the federal law to: 1) assure that children are placed in safe homes in a timely manner; 2) expedite reunification when it is in the best interest of the child; 3) place children permanently with relatives when appropriate; 4) terminate the parental rights of parents who do not provide for their children; and 5) facilitate the timely adoption of children for whom reunification is inappropriate.

The act defines two new terms. "Aggravated circumstances" is any circumstance attending to the commission of an act of abuse or neglect that increases its enormity or adds to its injurious consequences, including but not limited to abandonment, torture, chronic abuse, or sexual abuse. "Court of competent jurisdiction" is a court having the power and authority to act at the time of acting over the subject matter of the cause.

The definition of "neglected juvenile" is amended to make the following relevant considerations: (1) whether the juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect; and (2) whether the juvenile lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home. The definition of "reasonable efforts" is expanded to include the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

The act clarifies current law regarding the placement of a juvenile in secure or nonsecure custody when the juvenile is alleged to be abused or neglected. The act also requires the court to make specific written findings when determining whether to require the Department of Health and Human Services to use, not use, or cease reasonable efforts.

The act also shortens the time period for adjudicatory, dispositional, and review hearings. During a review hearing, the court is required to consider information received from: the juvenile; the parent; any person standing in loco parentis; the guardian; any foster parent, relative, or preadoptive parent providing care for the juvenile; the custodian or agency with custody; the guardian ad litem; or any other person that has information that may aid in the court's review.

The act adds a new section that allows the filing, in a pending case, of a petition for termination of parental rights as a motion in the cause when the juvenile is currently within the jurisdiction of the district court because of alleged abuse, neglect, or dependency. This provision prevents the necessity of filing a separate proceeding to terminate parental rights. The act amends the adoption statutes to meet the specific federal criminal history checks for all foster and prospective adoptive parents who receive foster care maintenance or adoption assistance payments.

The act has two Parts that are technically identical. Sections 1-16 of Part I contain the amendments described above. The amendments appear in Chapter 7A of the General Statutes and become effective January 1, 1999. Part II of the act became law upon enactment of the Juvenile Reform Act (S.L. 1998-202) which, among other things, created Chapter 7B of the General Statutes. Part II of HB 1720 becomes effective June 30, 1999, at which time the changes in Part I to Chapter 7A are re-codified in Chapter 7B (in order to conform with the Juvenile Reform Act), and Part I is repealed. Section 17 provides that the Legislative Research Commission may study proposed changes to the

juvenile justice system that relate to abuse, neglect, and dependency cases. Section 17 became effective November 6, 1998. (JM)

Studies

Independent Studies, Boards, Etc. Created, Continued or Changed

Child Health Insurance, S.L. 1998-1EX (SB 2), as amended by S.L. 1998-212, Sec. 12.12C (SB 1366, Sec. 12.12c) creates the Commission on Children with Special Health Care Needs (Commission). The purpose of the Commission is to monitor and evaluate the availability and adequacy of health services provided to special needs children under the State Health Insurance Program for Children. The Commission will have seven members, appointed by the Governor, consisting of the following:

- Two parents of children with special needs;
- A psychiatrist;
- A psychologist;
- A pediatrician whose practice includes services for special needs children;
- A representative of one of the children's hospitals in the State;
- A director of a public health department; and
- An educator who provides educational services to special needs children.

It also increases, from 14 to 18, the membership of the Joint Legislative Health Care Oversight Committee and charges it with oversight of the Child Health Insurance Program. This section became effective October 1, 1998. (LA)

Early Childhood Education and Development Initiatives Reform, S.L. 1998-212, Sec. 12.37B (SB 1366, Sec. 12.37B) reduces, from 38 to 25, the membership of the North Carolina Partnership Board and specifies the appointees as follows:

- The Secretary of Health and Human Services (or the Secretary's designee);
- The Superintendent of Public Instruction (or the Superintendent's designee);
- The President of the Department of Community Colleges (or the President's designee);
- Three members of the general public (a parent, a child care provider, and a chair of a local partnership) appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;
- Three members of the general public (a parent, a child care provider, and a chair of a local partnership) appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives;
- Twelve members appointed by the Governor including a child care provider, a pediatrician, a health care provider, a parent, a member of the business community, a representative of a philanthropic agency, and an early childhood educator;
- The Chair of the Partnership Board appointed by the Governor;
- One member of the public appointed by the General Assembly upon the recommendation of the Majority Leader of the Senate;

- One member of the public appointed by the General Assembly upon the recommendation of the Majority Leader of the House of Representatives;
- One member of the public appointed by the General Assembly upon the recommendation of the Minority Leader of the Senate;
- One member of the public appointed by the General Assembly upon the recommendation of the Minority Leader of the House of Representatives.

Members serve three-year terms and may serve successive terms. The Partnership must amend its Articles of Incorporation and bylaws by December 28, 1998, so new members may be appointed. This section became effective July 1, 1998. (JY)

Child Fatality Task Force, S.L. 1998-212, Sec. 12.44 (SB 1366, Sec. 12.44) makes changes to the original legislation to provide that the terms of Task Force members are for two years and that the Task Force is to report annually to the General Assembly and the Governor. The section became effective July 1, 1998. (JY)

Referrals to Departments, Agencies, Etc.

Child Placing Agencies' Rate Study, S.L. 1998-212, Sec. 12.29A (SB 1366, Sec. 12.29A) directs the Department of Health and Human Services (DHHS) to contract with an independent consultant to study the rate setting for the State's licensed child placing agencies. The study shall review the rate setting process and whether it is resulting in adequate reimbursement. DHHS shall report the results of the study, together with any recommendations, to the House and Senate Appropriations Committees on Human Resources by May 15, 1999. This section became effective July 1, 1998. (JY)

CIVIL LAW AND PROCEDURE

[Susan Hayes (SH), Tim Hovis (TH), Walker Reagan (WR), Steve Rose (SR)]

Enacted Legislation

Local Reg. Adult Entertainment, S.L. 1998-46 (SB 452) amends Chapter 160A to give local governments authority to regulate adult entertainment establishments, within constitutional limits, to prevent adverse secondary effects on neighboring properties which arise from these businesses. Local governments may use zoning regulations, licensing requirements, and other appropriate local ordinances, including requiring fees for licensing and regulation of hours of operation. The public nuisance statute is also amended to provide that the repeated use of property in violation of a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts is a nuisance.

The act became effective July 15, 1998. (SH)

Small Claims Judgments, S.L. 1998-120 (HB 1405) makes changes to G.S. 7A-228 concerning motions to set aside an order or judgment pursuant to Rule 60(b). G.S. 7A-228 provides that "with the consent of the chief district court judge, a magistrate may set aside an order or judgment [of another magistrate] for mistake or excusable neglect pursuant to Rule 60(b)(1) and order a new trial before a magistrate." In 1995, the Court of Appeals interpreted this statute to exclude district court judges from hearing **any** Rule 60(b) motions to set aside a magistrate's judgment. S.L. 1998-120 clarifies G.S. 7A-228 to authorize district court judges to hear any Rule 60(b) motion whether or not magistrates are authorized by the chief district court judge to hear a motion under Rule 60(b)(1).

The act became effective August 27, 1998. (TH)

Firefighters/No Conflict, S.L. 1998-122 (HB 915) amends G.S. 160A-415, the municipal inspection conflict of interest prohibition statute, to clarify that a person employed as a firefighter whose primary duties are fire suppression and rescue, but whose job also includes fire inspection as a secondary responsibility, does not have a conflict of interest if the person does work or supplies materials or appliances outside the person's firefighting employment for buildings that are subject to inspection by the city, so long as the firefighter does not inspect any work done by the firefighter, or materials or appliances supplied by the firefighter or the firefighter's company, within the previous six years.

The act became effective August 27, 1998. (WR)

Pay Rent to Stay Ejectment, S.L. 1998-125 (HB 1071) amends G.S. 42-34, the law permitting a stay of an order of summary ejectment pending appeal of the decision to a higher court, by requiring that undisputed rent in arrears be paid, and providing that if the district court's decision is appealed a bond must be posted and rent will be due until the

tenant vacates the premises. The act provides that during an appeal from a magistrate's decision granting an ejectment judgment against a tenant, the tenant must not only pay rent as it becomes due pending the appeal, but the tenant must also pay uncontested back rent found by the magistrate to be due. Any disputed rent found by the magistrate does not have to be paid pending the appeal. Also even if no rent is found to be in dispute by the magistrate, if the tenant's attorney on appeal files a pleading alleging evidence of a dispute over back due rent, the rent in dispute would not need to be paid pending the appeal. A tenant filing an appeal as an indigent would not be required to pay back due rent pending the appeal, only the future rent as it becomes due. The act also adds G.S. 42-34.1 to Chapter 42, to make it clear that the tenant is obligated for the rent through the time of vacating the premises, including the time from the date of the judgment. If the tenant appeals the judgment of the district court, a bond must be posted for the appeal but all rents held by the clerk shall be held until all appeals are exhausted.

The act became effective October 1, 1998, and applies to actions for summary ejectment filed on or after that date. (WR)

Support Orders Enforcement, S.L. 1998-176 (HB 534) makes various changes to the law concerning child support, alimony, and postseparation support. Section 1 authorizes the court to order the transfer of title to real property solely owned by the obligor to cover child support arrearages. Sections 2 through 10 authorize the use of income withholding for payment of alimony and postseparation support. Section 2 also authorizes the court to transfer title to real property to pay alimony or postseparation support. Section 11 provides that, in determining the amount and duration of alimony, the court may consider the fact that income received by either party was previously used by the court in determining the value of a marital or divisible asset in equitable distribution.

The act becomes effective January 1, 1999. Sections 1 through 10 apply to actions pending on or after the effective date. Section 11 applies to actions filed on or after the effective date. (TH)

Clarify Landlord's Obligation to Install Smoke Detectors, S.L. 1998-212, Sec. 17.16(i-k) (SB 1366, Sec. 17.16(i-k)) amends G.S. 42-42(a) to clarify that the landlord is responsible for replacing or repairing a smoke detector within 15 days of receipt of written notification by the tenant, and that the landlord must ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. It also amends G.S. 42-43(a) to require that the tenant notify the landlord in writing of the need for replacement or repairs to a smoke detector, and that the landlord must ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Finally, it amends G.S. 42-44 by providing that if the landlord fails to provide, install, or replace or repair a smoke detector within 30 days of having received written notice from the tenant or any agent of State or local government, the landlord is responsible for an infraction and subject to a fine of not more than $250. A smoke detector may be temporarily disconnected for construction or rehabilitation activities that are likely to activate the smoke detector or make it inactive. In addition, if the smoke detector is disabled or damaged other than through actions of the landlord, or the landlord's agents, or acts of God, the tenant shall reimburse the landlord the reasonable and actual cost for repairing or replacing the smoke

detector within 30 days of receiving written notice from the landlord or any agent of State or local government of the need for the tenant to make the reimbursement. Failure to make the reimbursement is an infraction and subjects the tenant to a fine of not more than $100. The tenant may temporarily disconnect a smoke detector to replace batteries or when it has been inadvertently activated.

These provisions become effective January 1, 1999, and apply to offensives committed on or after that date. (SR)

Sex Exploitation Act, S.L. 1998-213 (HB 581) creates a new Article 1F in Chapter 90 of the General Statutes entitled the Psychotherapy Patient/Client Sexual Exploitation Act which provides civil recourse for individuals who are sexually exploited by their psychotherapist.

The new Article defines a "psychotherapist" as a psychiatrist, psychologist, licensed professional counselor, substance abuse professional, social worker, fee-based pastoral counselor, licensed marriage and family therapist, or mental health service provider who performs or purports to perform psychotherapy. "Psychotherapy" is defined as the professional treatment or counseling of a mental or emotional condition. A "client" is defined as someone who receives psychotherapy, whether or not the person is charged for the service. The act contains a definition of "sexual contact" which includes a variety of actions and statements by the psychotherapist.

A client may bring a civil action under the act if the sexual exploitation occurred during the period of psychotherapy, within 3 years after the termination of therapy, or occurred by means of therapeutic deception. "Therapeutic deception" is defined as a representation by a psychotherapist that sexual contact with the therapist is consistent with or part of the client's treatment.

Under the act, a client may seek civil remedies in the form of actual or nominal damages, and attorneys' fees. Punitive damages may be obtained in accordance with the provisions of Chapter 1D of the General Statutes.

A client's sexual history is not subject to discovery under the act except for cases in which the plaintiff claims impairment of sexual function, or the court determines in a hearing prior to the discovery that the information is relevant and that its probative value outweighs its prejudicial effect. Evidence of sexual history is not admissible at trial unless the court, at the request of the defendant, makes the same determinations of relevancy and probative value prior to trial. Sexual history may not be proved by reputation or opinion.

Consent is not a defense to an action under the act, nor is the fact that the sexual exploitation occurred outside of therapy or off the premises of the therapist. The act contains a three-year statute of limitation, which begins to run from the last act of the therapist or from the discovery by the client of the sexual exploitation. In no event may an action be brought more than 10 years from the last act of the therapist.

Settlement agreements in which a party agrees not to pursue a complaint before the therapist's licensing or regulatory entity are void under the act.

The act becomes effective January 1, 1999, and applies to conduct occurring on or after that date. (TH)

Rule 9(j) Compliance, S.L. 1998-217, Sec. 61 (SB 1279, Sec. 61) amends Rule 9(j) of the Rules of Civil Procedure. Rule 9(j), enacted in 1995, requires a plaintiff filing a medical malpractice lawsuit to have the complaint reviewed by a medical expert who is expected to qualify as an expert witness or whom the plaintiff will seek to have qualified as an expert witness and who is willing to testify that the health care provider was negligent. Section 61 of S.L. 1998-217 adds a provision that the plaintiff must provide, at the request of the defendant, proof of compliance with Rule 9(j) through answers to written interrogatories. The defendant may submit no more than ten interrogatories to determine compliance with Rule 9(j), and these interrogatories do not count against the 50-interrogatory limit that already exists under Rule 33 of the Rules of Civil Procedure. The expert reviewing the case for the plaintiff must verify his or her answers to the interrogatories.

This act became effective October 30, 1998. (TH)

COMMERCIAL LAW

[Karen Cochrane-Brown (KCB), Linwood Jones (LLJ),
Walker Reagan (WR), Steve Rose (SR)]

Enacted Legislation

Economic Opportunity Act of 1998, S.L. 1998-55 (SB 1569) as amended by S.L. 1998-217, Sec. 11 (SB 1279, Sec. 11). See **TAXATION**.

Appreciation of Reverse Mortgages, S.L. 1998-116 (HB 1075) amends the Reverse Mortgage Act to allow lenders to contract for and receive shared appreciation or shared value under certain circumstances. The Reverse Mortgage Act allows senior homeowners to access the equity in their homes without having to sell their homes or take out home equity loans. A reverse mortgage provides payments to the homeowner either in a lump sum or over a period of years, and the debt is generally paid off when the homeowner dies, moves, or sells the home. This act amends the present law to permit contracts for shared appreciation, or contracts for shared value. Shared appreciation is defined as the increase in the value of the property from the date of loan origination to the date of loan repayment. Shared value is defined as a percentage of the value of the property at the time of loan repayment. The contracts are permitted if:

- the amount of shared appreciation or shared value does not exceed 10%;
- the loan is outstanding 24 months or longer, and the loan is guaranteed or insured by the federal government or originated under a program approved by specified federal mortgage entities;
- the borrower receives additional economic benefit in exchange for paying the shared appreciation or shared value; and
- the borrower receives a disclosure that explains the costs and benefits of a loan with shared appreciation or shared value and compares those costs and benefits with a comparable loan without shared appreciation or shared value.

The act establishes a procedure for obtaining appraisals of property if repayment is not in conjunction with the sale of the property, and requires that the costs of sale be deducted from the value of the property prior to calculation of shared appreciation or shared value when repayment is made in conjunction with the sale of the property. This act became effective October 1, 1998, and applies to contracts for loans entered into on or after that date. (KCB)

Engineering and Land Surveying Changes, S.L. 1998-118 (SB 794) as amended by S.L. 1998-217, Sec. 41 (SB 1279, Sec. 41) makes several changes to the laws governing the licensing of land surveyors and engineers. Among the changes are the following:

- The certificate of registration for land surveyors and professional engineers will become known as a certificate of licensure.
- Registered land surveyors will become known as professional land surveyors. (Engineers are already referred to under the existing law as professional engineers).

- The definition of what constitutes the practice of land surveying is revised and updated.
- Definitions are added for "inactive licensee," "retired professional engineer," and "retired professional land surveyor."
- The State Board of Registration for Professional Engineers and Land Surveyors is renamed the State Board of Examiners for Engineers and Surveyors (Board), may license continuing education sponsors, and may charge up to $250 for the license.
- The requirements for licensure as a land surveyor or engineer are changed as follows:
  1. Comity applicants for a Professional Engineer license must submit five references, two of whom are Professional Engineer's having personal knowledge of the applicant's engineering experience.
  2. The engineer-in-training is renamed the engineering intern. A student who has attained senior status in an accredited engineering program may be certified to sit for the exam as an intern.
  3. A land surveyor applicant with a Bachelor of Science degree must have two years (currently one year) of practical experience. An applicant with an associate degree in surveying technology must have four years (currently three years) of practical experience, three of which (currently two of which) were under a licensed land surveyor.
- Licenses are added for photogrammetrists who have seven years experience, meet other qualifications, and apply to the Board by July 1, 1999. After that date, applicants for photogrammetry must meet the same licensing requirements as a land surveyor.
- A land surveyor may only practice those surveying disciplines that are within the surveyor's area of expertise.
- Immediate family members of an applicant for licensure are disqualified as references.
- The fees for initial and renewed certification as a professional engineering or land surveying corporation are charged.
- The criteria for retaking an exam after failure or unexcused absence are revised.
- The maximum annual license renewal fee is increased from $50 to $75.
- The grace period for late renewal is reduced from 36 months to 12 months following the delinquency.
- A licensee may request inactive status.
- Licensees must cooperate fully with the Board during the course of any investigation.

This act became effective August 27, 1998. (LLJ)

Variable Rate Loans, S.L. 1998-119 (SB 565) amends the law dealing with contractual interest rates on certain loans of $25,000 or less. Currently, the law provides that if the parties agree to vary or adjust the rate during a month during the term of the loan, the maximum rate of interest shall be the rate announced by the Commissioner of Banks (Commissioner) in the preceding calendar month. The Commissioner is authorized to set

the rate on the 15th of each month for nonvariable rate loans as the greater of the rate for six month Treasury bills plus 6% (rounded to the nearest ½ of 1%) or 16%. This act allows variable rates to be adjusted on a basis other than monthly. It provides that the maximum rate of interest permitted is the greater of the rate announced by the Commissioner in the preceding calendar month or the calendar month preceding that in which the rate is varied or adjusted.

The act also repeals two sections of law. The first authorized variable rate loans for manufactured home loans. This section had been superseded by federal statute. The second sets limits on the rate of interest and fees that may be charged on certain types of installment loans. These loans will now be governed by another section of law that contains identical rate and fee limitations. Finally, the act amends the law dealing with disclosure of financial records. Financial institutions may disclose the name, address, and existence of an account to a government authority.

The act became effective October 1, 1998. The provisions regarding the adjustment of variable rate loans apply to variations or adjustments occurring on or after October 1, 1998, regardless of the date on which the loan was made. (KCB)

Electronic Commerce Act, S.L. 1998-127 (HB 1356). See **STATE GOVERNMENT**.

Wireless 911 Telephone Service and Tower Act, S.L. 1998-158 (SB 1242) establishes a system for charging cellular telephone users for enhanced 911 service and establishes a method of administering and distributing the collected funds. It also provides authority to the State to lease space on State land and buildings for the purpose of locating wireless telecommunications facilities.

In December 1997, the Federal Communications Commission (FCC) adopted an order requiring enhanced 911 capabilities for cellular telephones so that the physical location of the person using a cell phone to call for 911 services can be pinpointed when the 911 call is connected. In order to implement the enhanced 911 capabilities, there must be a mechanism for recovering the costs of the service. S.L. 1998-158 provides the mechanism for recovering those costs.

The act creates Chapter 62B of the General Statutes. G.S. 62B-2 creates a thirteen member Wireless 911 Board (Board). The Board will determine the service charge levied on cellular telephone users for wireless enhanced 911 service, aggregate the collected charges, and distribute them for purposes of paying for these systems. The Board shall consist of two members appointed by the Governor, one upon the recommendation of the League of Municipalities, and one upon the recommendation of the Association of County Commissioners; five members appointed by the General Assembly on the recommendation of the Speaker, a sheriff, three representing Commercial Mobile Radio Service (CMRS) providers and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials; and five members appointed by the General Assembly on the recommendation of the President Pro Tempore, a chief of police, two representing CMRS providers, one representing local exchange carriers, and one representing the North Carolina Chapter of the National Emergency Number Association. The Chair of the Board shall be the Secretary of Commerce, or the Secretary's designee. Terms are four years and limited to two successive terms.

The initial rate authorized is 80 cents per month, which may be decreased every two years but may not exceed 80 cents per month. CMRS providers shall collect the monthly fee from their customers and may deduct one percent for administrative expenses. Funds are deposited with the State Treasurer. Use of the funds is restricted. Sixty percent may be used to reimburse cellular service providers for complying with FCC wireless 911 requirements. Forty percent shall be distributed to the public safety answering points (PSAPs - the agencies that receive incoming 911 calls and make the dispatches). Half of that fund is distributed evenly among the PSAPs; the other half is distributed pro rata, based on population served. The use of these funds is restricted to direct costs of establishing and maintaining a wireless enhanced 911 system. The Board may retain one percent of collected funds for administrative expenses. Each PSAP must annually report its wireless 911 related income and expenses to the Board. The Board must make biennial reports to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The State Auditor may perform biannual audits to ensure that funds are being managed in accordance with the provisions of the act. Customer records and proprietary information are protected from public disclosure.

The act limits liability for personal injury and property damages. It does not apply to motor vehicle accidents.

The misuse of a wireless 911 system or information is a Class 3 misdemeanor, unless the value of the charge or service obtained exceeds $100, in which case it is a Class 1 misdemeanor.

G.S. 62A-10, which limits liability in connection with the supplying of services for a hard-wired 911 system, is amended to add a provision clarifying that it does not apply to motor vehicle liability.

Chapter 146 is amended by adding a new section authorizing the State to enter into leases for location of telecommunications towers on State real property and for placement of antennas upon State structures. Lessees must permit other carriers to co-locate on communications towers under contracts between the leasee and the co-locating carrier. Unless the State determines co-location is infeasible, towers must be constructed to accommodate other carriers. The State shall encourage towers to be located near each other and must choose locations that minimize the visual impact on the surrounding landscape. City and county ordinances apply to these leases.

The act provides that the wireless 911 service charge shall not be subject to gross receipts taxes or State income taxes.

The act became effective September 25, 1998, except the tax portions that are effective for taxable years beginning on or after October 1, 1998. (SR)

Telephone Line Access, S.L. 1998-180 (SB 1135) was recommended by the Joint Legislative Utility Review Committee at the request of the Utilities Commission and the Public Staff. The act amends G.S. 62-110(d) and (e), which provide for shared tenant telephone service. Previous law required that the access lines for shared tenant services could only be provided by the certified local exchange telephone company. However, under the Telecommunication Act of 1996 and Chapter 27 of the 1995 Session Laws, there may be more than a single provider authorized to provide the access lines. This act

conforms the law to those recent changes. The act also removes the requirement that the access lines be sold on a fully compensatory basis, and adds a provision permitting establishments catering to transient patrons (hotels, etc.) to obtain access lines on a flat rate basis. This act became effective October 8, 1998. (SR)

Commodities Act Amendment, S.L. 1998-196 (SB 333) amends G.S. 78D-30(d), the law governing the procedure for entry of orders in the Commodities Act, to clarify the effective date of a summary order issued by the Secretary of State for an alleged violation of the Commodities Act. S.L. 1998-196 provides that if the Secretary of State issues a summary order, it becomes effective 30 business days after the date the service of notice of the summary order was received, unless the Secretary receives a request for a hearing, other responsive pleading, or any other submission in response to the summary order. The act becomes effective January 1, 1999, and applies to administrative proceedings commenced on or after that date. (WR)

Extend Universal Service Rules Deadline, S.L. 1998-212, Sec. 15.8B (SB 1366, Sec. 15.8B) amends G.S. 62-110(f1) by changing the date when the Utilities Commission must have universal service rules for local telephone service in place. The original requirement of July 1, 1998 is extended to July 1, 1999. The purpose of the universal service rules is to insure that all persons will be able to receive local telephone service at a reasonable rate in an environment that will allow for competitive offerings of local exchange telephone service. This section became effective July 1, 1998. (SR)

Public Utility Regulatory Fee, S.L. 1998-212, Sec. 29A.8 (SB 1366, Sec. 29A.8) provides that the public utility regulatory fee under G.S. 62-302(b)(2) shall be set at .09 percent of North Carolina jurisdiction revenues of all public utilities regulated by the Utilities Commission. The public utility regulatory fee is the method by which the activities of the Utilities Commission and the Public Staff are financed. This section became effective July 1, 1998. (SR)

Refrigeration Contractors and CPA Board Changes, S.L. 1998-216 (SB 809) makes the following changes concerning the licensure of refrigeration contractors:

- Updates the language exempting from the refrigeration contracting licensure requirements those who install or service air conditioning devices and systems.
- Allows a person who failed the refrigeration contractors exam to request re-examination prior to the next regularly scheduled exam.
- Permits the State Board of Refrigeration Examiners (Board) to issue reciprocal licenses to contractors licensed in other states
- Requires approval of a majority of the seven-member Board in order to reinstate a revoked license. The prior law required the approval of only three members.
- Allows the Board to determine the number of refrigeration contracting business sites for which one licensee can be responsible.
- Increases the fee for reinstatement of a lapsed license from $45 to $75.

S.L. 1998-216 also contains a provision authorizing the Board of Certified Public Accountants Examiners to borrow money and to mortgage the property for which the money was borrowed. This authority is subject to the approval of the Governor and the Council of State. In giving a mortgage, the Board may pledge only its own assets and revenues, not those of the State. S.L. 1998-216 took effect October 31, 1998. (LLJ)

Shareholder Protection Act Technical Correction, S.L. 1998-217, Sec. 24 (SB 1279, Sec. 24) amends G.S. 75E-3 to authorize the Attorney General to exempt from the Shareholders Protection Act any business combination that is solely an internal corporate restructuring which does not affect any material change in the ultimate ownership of the corporation and does not affect the ongoing applicability of the Shareholders Protection Act to the corporation or any other entity. This section became effective October 29, 1998. (WR)

Studies

Independent Studies, Boards, Etc. Created, Continued or Changed

Wireless 911 Telephone Service and Tower Act, S.L. 1998-158 (SB 1242). See summary under this subject.

Referrals to Existing Committees

Study Definition of Doing Business in North Carolina, S.L. 1998-212, Sec. 21A.1 (SB 1366, Sec. 21A.1) directs the Revenue Laws Study Commission shall to study the issue of when a corporation is doing business in North Carolina for the purposes of the corporate income tax. This section became effective October 30, 1998. (KCB)

CONSTITUTION AND ELECTION LAW

[Bill Gilkeson (WRG)]

(Note: Regardless of the effective date the General Assembly places on legislation affecting voting, the legislation cannot go into effect until it has received approval from the U.S. Attorney General under Sec. 5 of the Voting Rights Act of 1965.)

Congressional Redistricting-2, S.L. 1998-2 (HB 1394) created a new redistricting plan for North Carolina's 12 members of the U.S. House of Representatives to be used in the 1998 elections. The congressional district plan used in the elections of 1992, 1994, and 1996 was held unconstitutional in 1996 by the U.S. Supreme Court in the case of *Shaw v. Hunt*. The 1997 General Assembly's first attempt to remedy that constitutional flaw was S.L. 1997-11, enacted in 1997. However, in April of 1998, after congressional candidates had already filed their candidacies and ballots had already been printed for the May primary, the U.S. District Court found that plan unconstitutional. The litigation focused on the 12th congressional district. In the 1992 plan, the 12th was majority black, stretched from Gastonia to Durham, and was in several places no wider than the right of way of Interstate 85. In the 1997 plan, the black population of the 12th was reduced to just under 50% and the district was pruned and fattened so that it stretched only from Charlotte to Greensboro. Other districts, including the majority-black 1st, were made more compact. The District Court found the 1997 plan's 12th district to be an unconstitutional gerrymander as a matter of law, but said the plaintiff's challenge to the 1st district was not so clearly valid and could not be sustained without more evidence. On April 3, the District Court gave the General Assembly until May 22 to enact a new plan. It said that once the plan was approved, congressional candidates could file again in July, a primary could be held September 15, and the general election could be held as scheduled on November 3. The General Assembly was able to meet the May 22 deadline by restricting its changes to the 12th and surrounding districts. The 1998 bill further pruned and fattened the 12th so that it extended only from Charlotte to Winston-Salem and included all of Rowan County. The 12th's black percentage was reduced to 35%. The act was made effective immediately. It was precleared by the U.S. Attorney General under the Voting Rights Act on June 8, 1998. The U.S. District Court approved the bill for use in the 1998 elections on June 22, 1998. (The State appealed the District Court's invalidation of the 1997 version of the 12th District. The U.S. Supreme Court has scheduled to hear oral arguments in that appeal on January 20, 1999, so the 12th of 1998 may still be subject to change.) (WRG)

Motor Vehicle Technical Amendments – Motor Voter Citizenship Check, S.L. 1998-149, Sec. 11.1 (HB 1474, Sec. 11.1) amends G.S. 163-82.19 to require that whenever a drivers license examiner takes a voter registration application, the examiner shall ask if the applicant is a U.S. citizen. If the answer is "no" or if the applicant declines to answer, the examiner shall inform the applicant that a noncitizen applying to register to vote is committing a felony. The provision became effective December 1, 1998. (WRG)

Restructure DOT Board – Disclosure of Political Contributions and Fund-raising, S.L. 1998-169, Sec. 1 (HB 1304, Sec. 1). See **TRANSPORTATION**.

Extend Statewide Data Elections Management System, S.L. 1998-212, Sec. 24 (SB 1366, Sec. 24) amends Section 31(a) of the 1997 Appropriations Act (S.L. 1997-443) to push forward the deadline for counties to adhere to standards for a statewide data elections management system. The statewide system is to include voter registration, campaign reporting, and election night returns. The deadline for counties in the 1997 budget bill was August 31, 1998. The new deadline is July 1, 1999. The section became effective July 1, 1998. (WRG)

Dual Judgeship Candidacies, S.L. 1998-217, Sec. 36 (SB 1279, Sec. 36) amends G.S. 163-323(e) to provide that a candidate for Superior Court judge may not also be a candidate for any other office if the date of election for the two offices is the same. This provision is a correction to the 1996 act creating a nonpartisan procedure for electing Superior Court judges. The 1996 act prohibited candidates for Superior Court judge from running for more than one Superior Court judgeship in the same election, but left a legal opening for a person to run for Superior Court judge and one other office in the same election. This provision closes that opening. It became effective February 1, 1999. (WRG)

CRIMINAL LAW AND PROCEDURE

[Brenda Carter (BC), Karen Cochrane-Brown (KCB), Susan Hayes (SH), Tim Hovis (TH), Jo McCants (JM), Walker Reagan (WR), Steve Rose (SR)]

Enacted Legislation

Eliminate Certified Notice, S.L. 1998-58 (HB 354) amends G.S. 15A-544(b) by requiring the clerk of superior court to serve upon each obligor by first class mail a copy of an order of bond forfeiture and the notice that judgment will be entered upon the order after 60 days. Prior to this amendment, the clerk was required to send the order and notice by certified mail. The act became effective July 24, 1998. (JM)

Criminal Tax Violations, S.L. 1998-178 (SB 1228) amends G.S. 105-236(7) and (9a) to make it a Class H felony to either (i) attempt to evade or defeat a tax, or (ii) assist another person with the presentation of a fraudulent tax document. This act became effective December 1, 1998, and applies to offenses occurring on or after that date. (SH)

1998 Governor's DWI Amendments, S.L. 1998-182 (SB 1336), as amended by S.L. 1998-217, Sec. 62 (SB 1279, Sec. 62) amends various laws related to operating motor vehicles while impaired including: revising the driving while impaired (DWI) forfeiture laws and other related laws; providing for expedited hearings of DWI's involving seized vehicles; providing for zero alcohol tolerance for commercial drivers, school bus drivers, and day care vehicle drivers; and providing for the immediate 30-day revocation for drivers licenses of persons under 21 violating zero tolerance. This act also doubles the amount of the current fines for most DWI offenses.

PART I of the act (Sections 1 through 17) amends the DWI forfeiture law to make changes and improvements in the law in seven major ways.

Section 1.1 expands the definition of offenses involving impaired driving to include first degree murder when based on impaired driving and habitual impaired driving.

Section 2 amends G.S. 20-28.2 to:

- Expand the definition of "impaired driving revocation" to include revocations for habitual impaired driving, commercial driving while impaired, and all vehicular homicides involving impaired driving.
- Add to the definition of "innocent owner" persons whose vehicles are reported stolen, persons who file a police report for unauthorized use of the vehicle, and persons whose rental care is driven by a person not authorized under the rental agreement.
- Permit a forfeiture hearing either at sentencing for the DWI, at a subsequent hearing, or at an expedited hearing after the defendant fails to appear on the DWI charge and the order of arrest for failing to appear has not been set aside within 60 days.

- Provide that insurance proceeds due from a vehicle damaged in conjunction with the offense leading to the seizure are considered part of the value of the vehicle seized. The proceeds are subject to forfeiture, must be paid to the clerk of court, and disbursed pursuant to orders of the court.
- Allow the court to order the forfeiture of collected insurance proceeds and assign the rights to claim unpaid insurance proceeds to the county school board.
- Provide that upon payment of towing and storage charges, the seized vehicle may be returned to an innocent owner, including a lessor.
- Provide that the seized vehicle may be released to a lienholder if the vehicle owner is in default on the loan secured by the vehicle. The vehicle may be sold in accordance with the repossession law with any equity arising from the sale to be paid to the county board of education.

Section 3 amends G.S. 20-28.3 to:

- Remove the requirement that the arresting officer seize a vehicle reported stolen or a rental vehicle driven by a person not authorized on the rental agreement, and notify the relevant parties of the seizure of the vehicle. The Governor must designate a State agency to notify relevant parties and the arresting officer may notify the rental company.
- Make an order of seizure valid statewide and clarify law enforcement's authority to effect the order of seizure.
- Allow seized vehicles to be held either through a State or regional central storage arrangement, or if none is available, by the local county board of education. Storage fees are raised from $5 per day to $10 per day, and school boards are allowed to charge for storage if cars are held on school property. Private commercial towing companies are entitled to payment for towing and storage charges prior to releasing the vehicle, unless the towing company agrees to other arrangements.
- Expand the options for obtaining temporary release of a seized vehicle by a nondefendant owner pending trial by allowing property and bail bonds as collateral for the return of the vehicle at the forfeiture hearing, and reduces the amount of the bond from twice the fair market value of the vehicle to just the fair market value.
- Allow a pretrial determination of innocent owner status by petition. A court hearing will be set within 10 days of the filing of the petition. During that time, the district attorney may authorize the release of the vehicle if the district attorney determines that the vehicle will not be subject to forfeiture.
- Establish a method for a defendant owner to have a pretrial hearing on the question of whether the vehicle is subject to forfeiture where the defendant contends that the defendant's license was not revoked for an impaired driving offense and the seizure was a mistake.
- Allow the lienholder to petition for pretrial release where the owner is in default on the loan. The lienholder is allowed to sell the vehicle in accordance with the repossession law and any equity arising from the sale is paid to the county board of education.

- Provide that insurance proceeds be seized pending forfeiture, allow the school board attorney to negotiate the claim, and allow the release of a vehicle determined to be a total loss upon payment of the insurance proceeds.
- Provide that a seized vehicle may be sold prior to forfeiture in order to mitigate excessive storage charges. The sale may occur: 1) where the owner consents to the sale; 2) after 90 days if the vehicle is worth $1,500 or less; and 3) anytime the outstanding towing and storage charges equal or exceed 85% of the worth of the vehicle.
- Authorize the school board attorney to take a more active and significant role in the forfeiture process.
- Provide that the defendant be taxed with the cost of towing and storage as part of the restitution for the criminal offense.
- Make district court trials of DWI cases involving seized vehicles a higher priority and restrict the grounds on which these cases may be continued to later dates. A superior court may review innocent owner and lienholder determinations made in district court.

Section 4 amends G.S. 20-28.4 to make conforming changes.

Section 5 amends G.S. 20-28.5 to:

- Change the sales process for forfeited vehicles and seized vehicles from a judicial sale to a public sale with special notices as permitted for the disposal of surplus property by schools.
- Provide that the county school board is entitled to reimbursement of administrative costs for handling the forfeited vehicle.
- Clarify how much a school board must pay other school boards in the county if the school board retains the forfeited vehicle.

Section 6 repeals G.S. 20-28.6, which restricted registration of vehicles for persons whose vehicles are forfeited.

Section 8 adds G.S. 20-28.8 and 20-28.9 to clarify what information the clerk of court is required to report to the Department of Motor Vehicles and authorizes the Department of Public Instruction (DPI) to administer regional or statewide contracts for the towing, storage, and sale of seized and forfeited vehicles. It also clarifies that storage fees up to $10 per day may be charged under a Statewide or regional contract and that a $10 per vehicle administrative fee will be collected to defray DPI's administrative costs.

Sections 9 and 10 amend G.S. 20-54 and add G.S. 20-54.1 to recodify restrictions on the registration of vehicles for persons whose vehicles are forfeited, but allow a vehicle owner to renew the vehicle registration prior to an order of forfeiture.

Section 12.1 amends G.S. 20-166.1(h) to require DMV to modify the accident report form so the investigative officer may indicate if the vehicle involved in the accident was seized and subject to forfeiture.

Section 14 exempts seized vehicles from the mechanics lien statute (G.S. 44A-2(d)), and provides for payment of towing and storage through the seizure and forfeiture process.

Section 15 amends the mechanics lien statute in G.S. 44A-4(b)(1), as an alternative to notice being sent by DMV, to allow the lienholder to send the notice

directly to a vehicle owner whose vehicle is subject to sale to satisfy an unpaid mechanics lien.

Sections 16 and 17 amend the bail bond statutes in G.S. 58-71-1 and 58-71-35, to allow bail bonds to be used to bond the release of seized vehicles.

PART II of the act (Sections 18 through 25) changes the punishment for the commercial driving while impaired offense (.04 blood alcohol or more) so that it conforms with the existing punishments for other DWI offenses. A new offense, G.S. 20-138.2A, Operating a Commercial Vehicle After Consuming Alcohol, is created. The first offense of this statute is a Class 3 misdemeanor punishable only by a $100 penalty and a 10-day post conviction disqualification. A second or subsequent offense is a misdemeanor and punishable under the punishment provisions for other DWI offenses.

PART III of the act (Sections 26 through 27) makes it illegal to drive a school bus or a childcare vehicle with any alcohol in the body. A new offense, G.S. 20-138.2B, Driving a School Bus, School Activity Bus, or Child Care Vehicle After Consuming Alcohol, is created. The first offense is a Class 3 misdemeanor punishable only by a $100 penalty and a 10-day post conviction revocation. A second or subsequent offense is a misdemeanor and punishable under the punishment provisions for other DWI offenses.

PART IV of the act (Sections 28 through 30) makes the immediate 30-day civil revocation of a drivers license for DWI offenses also applicable for violations of zero tolerance for drivers under age 21.

PART V of the act (Sections 31 through 35) doubles the maximum fines for DWI offenses. Level 1 fine is increased from $2,000 to $4,000. Level 2 fine is increased from $1,000 to $2,000. Level 3 fine is increased from $500 to $1,000. Level 4 fine is increased from $250 to $500. Level 5 fine is increased from $100 to $200.

PART VI - authorizes the Department of Public Instruction to hire a person to administer the statewide or regional towing and storage contract for seized vehicles. See also "Studies" below.

PART VII - EFFECTIVE DATE The expedited sales provisions and the provision allowing DPI to enter into a Statewide towing and storage contract are effective October 15, 1998. The other provisions of Part I changing the DWI forfeiture law became effective December 1, 1998, and apply to offenses committed on or after that date. The new provisions allowing for increased options to release a seized vehicle through bonding, an innocent owner petition, a defendant owner petition, a lienholder petition, insurance proceeds and expedited pre-trial sales apply to vehicles held on or after October 15, 1998. The Parts for zero tolerance violations, immediate revocation for under 21 zero tolerance violation, and increases in DWI fines became effective December 1, 1998. (WR)

Juvenile Justice Reform Act, S.L. 1998-202 (SB 1260), as amended by S.L. 1998-217, Sec. 57 (SB 1279, Sec. 57). Any provision of this act, for which a specific effective date is not mentioned, became effective October 27, 1998.

PART I Transfer of Existing Juvenile Services Functions to the Office of the Governor and Creation of State and Local Advisory Councils.

Office of Juvenile Justice. Effective January 1, 1999, the Office of Juvenile Justice is temporarily established within the Office of the Governor. Juvenile justice

responsibilities and all personnel, funds, duties, and facilities relative to juvenile justice currently split between the Division of Youth Services in the Department of Health and Human Services and the Division of Juvenile Services in the Administrative Office of the Courts will be merged within the Office of Juvenile Justice. Counties will continue to be required to provide office space for juvenile court counselors and support staff as assigned by the new Office of Juvenile Justice. On or before April 1, 2000, the Governor must submit a plan for permanent placement to the General Assembly for its approval.

Juvenile Crime Prevention Councils. Effective January 1, 1999, each board of county commissioners must appoint a Juvenile Crime Prevention Council as a prerequisite to receiving funding for juvenile court services and delinquency prevention programs. Each council shall annually review the needs of troubled juveniles within the county and examine the assets and resources available to address those needs. Small or rural counties within the same judicial district may establish a multi-county council to examine the benefits of joint program development.

State Advisory Council on Juvenile Justice and Delinquency Prevention. Effective January 1, 1999, a new State Advisory Council on Juvenile Justice and Delinquency Prevention (Council) will be established in the Office of the Governor. The Council will advise the Office of Juvenile Justice and other State agencies serving juveniles, and will develop recommendations about priorities and needed improvements within those agencies. The Council will review and comment on the proposed budget for the Office of Juvenile Justice and will report its recommendations to the General Assembly by March 1 of each year.

PART II Revision of North Carolina Juvenile Code and of Related Laws Regarding Juveniles.

Effective July 1, 1999, existing provisions of the General Statutes governing juveniles are revised and recodified into a new Juvenile Code which encompasses many current provisions related to abuse, neglect, and dependency as well as other statutes related to supervision and control of minors. Portions of the Juvenile Code governing delinquent and undisciplined juveniles are substantially rewritten to place a stronger emphasis on punishment and protection of the public. The major changes are outlined herein.

Jurisdiction Over Delinquent And Undisciplined Juveniles. When a juvenile is adjudicated of an offense that if committed by an adult would be first degree murder, first degree rape, or a first degree sex offense, jurisdiction may be retained until the juvenile reaches the age of 21 years. If the juvenile is adjudicated of any other offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, jurisdiction may be retained until the juvenile reaches the age of 19 years. Under prior law, the court's jurisdiction over any delinquent juvenile would have terminated when the juvenile reached the age of 18. Jurisdiction over undisciplined juveniles is extended to include 16- and 17-year-olds that are beyond the disciplinary control of their parent, guardian, or custodian.

Fingerprints And Photographs. A law enforcement officer or agency is required to fingerprint and photograph a juvenile 10 years of age or older when the juvenile is in custody and alleged to have committed a nondivertible offense. The fingerprints and

photograph must be destroyed when a petition is not approved for filing, when the court does not find probable cause, or when the juvenile is not adjudicated delinquent.

Appeal of Transfer Decision. A district court order of transfer to superior court may be appealed to superior court for a hearing on the record. Failure to appeal the order to superior court will waive appeal of the issue to the Court of Appeals upon final disposition of the case. Upon appeal of the order to superior court, the judge must within a reasonable time review the record of the transfer hearing and, upon a finding of abuse of discretion relating to the transfer decision, may remand the case for adjudication. The issue of transfer may be appealed to the Court of Appeals only after the juvenile is convicted in superior court.

Disposition Options for Undisciplined and Delinquent Juveniles. Three offense classifications are established. "Violent" offenses include Class A through Class E felonies; "serious" offenses include Class F through Class I felonies or Class A1 misdemeanors; and "minor" offenses include all other misdemeanors. Before the dispositional hearing, the intake counselor must compute the juvenile's "delinquency history level," based on points assigned for prior adjudications and for probation status at the time of the offense. Three levels of disposition are established: Level 1 (community), Level 2 (intermediate), and Level 3 (commitment). A disposition chart indicates which level or levels of disposition are available in a particular case, depending upon the offense classification and the juvenile's delinquency history level. When a juvenile is adjudicated delinquent for more than one offense at a given time, the court must consolidate the offenses for disposition and must base the disposition upon the class of the offense and the delinquency history level for the most serious offense. Additional provisions are added regarding the application of the chart in the case of probation violators and habitual juvenile offenders. With some exceptions, a juvenile committed to training school may not remain committed for longer than an adult could be committed for the same offense. Requirements for the post-release supervision planning process for juveniles committed to training school are specified and every juvenile released from training school is required to complete at least 90 days of post-release supervision.

Juvenile Court's Authority Over Parents; Employment Protection. Upon appropriate motion, the court may issue a show cause order directing a parent to appear and show cause why the parent should not be found in civil or criminal contempt for willful failure to comply with an order of the court. The court may order a parent to participate in classes or treatment and to assist the juvenile in areas necessary to complete the period of probation. Employers are prohibited from discharging or demoting any employee who is required to attend a hearing involving an undisciplined or delinquent juvenile for which the employee is the parent, guardian, or custodian.

Juvenile Records and Disclosure of Information. The revised Juvenile Code allows the court to direct the clerk to "seal" any portion of a juvenile's record, so that it may be examined only by court order. Any portion of the record that is not sealed may be examined and copies may be obtained by the juvenile or one acting on behalf of the juvenile, or by an appropriate court officer. The prosecutor may share with a sworn law enforcement officer any information obtained from a juvenile's record, but the law enforcement officer may not photocopy any part of the record. With respect to records and information concerning juveniles under jurisdiction of the court, the Office of

Juvenile Justice may authorize designated agencies to share information in order to protect the juvenile. Shared information remains confidential among the agencies involved. Information acquired by a school pursuant to Juvenile Code provisions requiring disclosure of certain information to a juvenile's school may not be the sole basis for a decision to suspend or expel a student. The Criminal Justice Information Network is expanded to include the sharing of juvenile justice information among law enforcement, judicial, and corrections agencies.

Expunction of Records. A juvenile's record may be expunged when the juvenile reaches the age of 18 and has been released from the juvenile court's jurisdiction for a minimum period of 18 months. Under no circumstances may an adjudication for a felony Class A-Class E be expunged.

PART III Sentencing Commission Directives.

The North Carolina Sentencing and Policy Advisory Commission (Commission) is directed to evaluate juvenile dispositional laws and policies in relation to the stated purposes of the revised Juvenile Code and the availability of dispositional alternatives. The Commission must develop a facilities population simulation model for the Office of Juvenile Justice and determine long-range needs of the juvenile justice system by identifying critical problems in the system, assessing the cost-effectiveness of State and local funding, and recommending priorities for the allocation of juvenile justice funds. A representative of the Office of Juvenile Justice will serve on the Commission.

PART IV Directives, Studies, Reports and Training.

Minority Sensitivity Training. Not later than May 1, 1999, the Department of Justice will develop and annually conduct minority sensitivity training for all law enforcement personnel. The training will be designed to enhance communication between law officers and minority juveniles, and to identify and address the needs of officers with regard to minority juveniles. The training will also serve as a means of assessing on an annual basis the degree to which race is a factor influencing dispositions within the juvenile justice system. Within Department guidelines, local law enforcement agencies may develop and implement training at the local level. The Office of Juvenile Justice shall ensure that all juvenile court counselors and other Office personnel receive this training.

Study of Abuse, Neglect, and Dependency. The Legislative Research Commission is authorized to study findings of the Court Improvement Project and to report to the 1999 General Assembly its recommendations regarding abused, neglected, and dependent juveniles.

Juvenile Justice Information Plan and System. The governing board of the Criminal Justice Information Network will plan and develop a comprehensive juvenile justice information system to collect specified data and information about alleged delinquent juveniles. The board will also study the fingerprinting and photographing of juveniles alleged to be delinquent and the expunction of juvenile records, and will report its findings and recommendations by May 1, 1999, to the Chairs of the House and Senate Appropriations Committees and the Fiscal Research Division of the General Assembly.

Community-Based Alternatives. The Office of Juvenile Justice will establish two probation option pilot programs - GRASP and On Track. The Office will also develop a cost-effective plan to establish Statewide community-based dispositional alternatives for

delinquent juveniles along with a funding strategy to encourage communities to provide local resources, services, and treatment options to meet the physical, emotional, and mental needs of juveniles and their families. The Office will examine judicial districts that experience high crime rates and make recommendations regarding to which of those districts should have non-residential day reporting centers for juveniles assigned to intensive supervision. The report must be made by April 1, 2000, to the Chairs of the Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division of the General Assembly.

Blended Sentencing and Direct Filing Study. The Office of Juvenile Justice, in consultation with the North Carolina Sentencing and Policy Advisory Commission, will study blended sentencing and direct filing in certain juvenile cases. Blended sentencing is a combination of adult and juvenile sentencing under specific circumstances. Direct filing would allow a prosecutor to charge a juvenile as an adult absent a juvenile court hearing. The Office of Juvenile Justice will report the results of the study, along with any legislative recommendations, to the General Assembly not later than March 15, 2000.

Family Courts. The Administrative Office of the Courts (AOC) will establish family court pilot programs in selected district court districts. The pilot programs will follow published guidelines and will be assigned to hear all matters involving intrafamily rights. AOC will submit a report regarding the success and impact of the programs not later than March 1, 2000, to the Chairs of the Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division of the General Assembly.

Miscellaneous Matters Assigned to Office of Juvenile Justice. The Office of Juvenile Justice is assigned the following tasks:

- Develop a risk and needs assessment instrument and present it to the Joint Legislative Commission on Governmental Operations by May 1, 1999.
- Study funding for delinquency and substance abuse prevention in cooperation with the Department of Health and Human Services and report by May 1, 1999.
- Evaluate juvenile delinquency programs and report on case management and services with the Department of Public Instruction by April 1, 2000.
- Report on apparent effectiveness of the Juvenile Justice Reform Act by October 1, 2000.
- Study overrepresentation of racial minorities in the juvenile justice system and report annually, final report by May 1, 2002.
- Study use of detention facilities and report by May 1, 1999, and again by January 15, 2001.

Alternative Education Study. Requires the Department of Public Instruction to study and recommend by May 1, 1999, methods the State might use to provide alternative educational programs for students suspended or expelled from school.

PART XII Facilities Construction.

The Office of State Construction in the Department of Administration will supervise construction, renovation, and demolition of juvenile facilities during 1998-99 and report by May 1, 1999, any changes in projects and allocations for 1998-99. (SH)

Limit Pretrial Release, S.L. 1998-208 (HB 1023) adds a new subsection (d) to G.S. 15A-533 which governs the pretrial release of defendants in capital and noncapital cases. The new subsection (d) creates a rebuttable presumption that no condition of pretrial release will reasonably assure the appearance of a defendant charged with a drug trafficking offense if a judicial official finds: (1) the drug trafficking offense was committed while the person was on pretrial release for another offense; and (2) the person has been previously convicted of a Class A through E felony or an offense involving drug trafficking and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later. Under these circumstances, pretrial release may only be granted by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and that release does not pose an unreasonable risk of harm to the community.

S.L. 1998-208 also creates a new G.S. 7A-109.2 which requires the clerk of superior court to ensure that all records of dispositions in criminal cases contain essential information about the case, including the identity of the presiding judge and the attorneys representing the State and the defendant.

These provisions become effective January 1, 1999, and apply to offenses committed or records compiled on or after that date. (TH)

Life without Parole for Second Offense of B1 Felony, S.L. 1998-212, Sec. 17.16(a) (SB 1366, Sec. 17.16(a)) creates a new G.S. 15A-1340.16B to provide that a person convicted of a B1 felony shall be sentenced to life imprisonment without parole if: (i) the victim was 13 years old or younger, (ii) the person has one or more prior convictions of a B1 felony, and (iii) there are no mitigating factors. This provision is effective January 1, 1999, and applies to offenses committed on or after that date. (SH)

Enhance Penalty for Injury to Pregnant Women, S.L. 1998-212, Sec. 17.16(b) (SB 1366, Sec. 17.16(b)) creates a new G.S. 14-18.2 to provide that a person who causes injury to a pregnant woman, resulting in miscarriage or stillbirth, during the commission of a crime, knowing that the woman is pregnant, is guilty of a crime one class higher than the crime committed. This provision is effective January 1, 1999, and applies to offenses committed on or after that date. (SH)

Increase the Penalty for Cruelty to Animals, S.L. 1998-212, Sec. 17.16(c) (SB 1366, Sec. 17.16(c)) amends G.S. 14-360 to provide for a Class I felony for any person who tortures, mutilates, maims, cruelly beats, disfigures, poisons, or kills any animal. This provision is effective January 1, 1999, and applies to offenses committed on or after that date. (SH)

Greyhound Racing Prohibited, S.L. 1998-212, Sec. 17.16(d) (SB 1366, Sec. 17.16(d)) creates a new G.S. 14-309.20 prohibiting greyhound racing in the State of North Carolina, including the transmission or receipt of interstate or intrastate simulcasting of greyhound races. Violation is a Class 1 misdemeanor. This provision is effective January 1, 1999, and applies to offenses committed on or after that date. (SH)

Drug Offense Changes, S.L. 1998-212, Sec. 17.16 (e), (f), (g), and (h) (SB 1366, Sec. 17.16 (e), (f), (g), and (h)) amend Chapter 90 to provide for the following: (i) creation of a Class C felony for sale or delivery of drugs to a person under 13; (ii) creation of higher punishment if a person hires or intentionally uses someone under 13 to violate the drug laws, two felony classes higher for a person between the ages of 18 and 21, and four classes higher for a person 21 or older; (iii) civil liability for the intentional use of a person under 18 to commit a violation of the drug laws; and (iv) creation of a new G.S. 90-95.6 providing for a Class D felony for a person 21 or older who promotes drug sales by a minor. These provisions become effective January 1, 1999, and apply to offenses committed on or after that date. (SH)

Increase Penalty for Domestic Criminal Trespass, S.L. 1998-212, Sec. 17.19 (SB 1366, Sec. 17.19) amends G.S. 14-134.3 to increase the penalty for domestic criminal trespass if the trespass is committed upon property operated as a safe house for victims of domestic violence and the person trespassing is armed with a deadly weapon. A person convicted of violation of this section under these conditions is guilty of a Class G felony. This amendment does not affect the present law relating to domestic criminal trespass. A person convicted of domestic criminal trespass on property other than a safe house and in the absence of a deadly weapon is still guilty of a Class 1 misdemeanor. This section becomes effective January 1, 1999, and applies to offenses committed on or after that date. (KCB)

Abolish Execution by Lethal Gas, S.L. 1998-212, Sec. 17.22 (SB 1366, Sec. 17.22) amends Chapter 15 to abolish execution by lethal gas and provide that persons sentenced to death shall be executed by the administration of lethal drugs. This act became effective October 30, 1998. (SH)

Private Prison Provisions, S.L. 1998-212, Sec. 17.23 (SB 1366, Sec. 17.23) makes various changes to the law concerning private prisons.

Subsection (a) creates a new G.S. 14-256.1 to make it a Class H felony for any person convicted in a jurisdiction other than North Carolina, but housed a in private correctional facility located in the State, to escape from the North Carolina correctional facility.

Subsection (b) amends Section 19.17 of S.L. 1997-443 to clarify that the Department of Correction (DOC) shall establish proposed standards for private correctional facilities that are used to confine inmates from a jurisdiction other than the federal government and North Carolina. The date for the DOC report is extended from May 1, 1998, to March 15, 1999. The report must also include a recommendation on the authority necessary to enforce these standards and include draft legislation to enact the proposed standards. DOC is also directed to include in the report a recommendation on the appropriateness of the penalty provided for in G.S. 14-256.1, enacted in subsection (a) of this section, and the implications of using this statute to convict inmates who are serving sentences in North Carolina for convictions in other jurisdictions.

Subsection (c) amends Section 19.17 of S.L. 1997-443 to clarify that the moratorium on private correctional facilities applies to facilities for the confinement of prisoners from a jurisdiction other than the federal government.

Subsection (a) of this section becomes effective January 1, 1999. The remaining subsections became effective July 1, 1998. (TH)

Crime Victims' Rights Act, S.L. 1998-212, Sec. 19.4 (SB 1366, Sec. 19.4) prescribes by law the rights of victims of crimes as provided for under Section 37 of Article I of the North Carolina Constitution as approved by the voters November 5, 1996.

The act amends the current Fair Treatment for Victims and Witnesses Act to apply to victims of offenses not otherwise covered by the new Crime Victims' Rights Act. Victims eligible for services under the new Crime Victims' Rights Act are those against whom there is probable cause to believe one of the following crimes was committed: any Class A, B1, B2, C, D, or E felony, or other felonies including assaults with deadly weapons, voluntary manslaughter, kidnapping, child sex abuse, elderly abuse and neglect, burglary, arson, habitual DWI, robbery, death by vehicle, habitual assault and stalking, or an attempt of any of these crimes. Also eligible are victims of any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in the domestic violence statutes: assault and battery, assault by pointing a gun, domestic criminal trespass, or stalking. The act also provides that the next of kin of a deceased victim has the rights of other victims. However, the personal representative of the estate must assert the right to restitution.

The act defines the responsibilities of law enforcement officers to notify the victim regarding victim's rights and the services available to victims, including notice about victim's compensation and contact numbers for the investigative agency and the district attorney. The victim must be provided information on the defendant's release from custody, and the time, date and place of the defendant's first court appearance.

The act defines the responsibilities of the district attorney including the duty to provide the victim with written material on the victim's rights, the court process, and the victim's opportunity to participate in the trial process. Whenever practical, the district attorney's office shall provide the victim with a secure waiting area - away from the defendant - during court proceedings. The court must make every effort to permit full attendance by the victim, so long as it would not interfere with the defendant's right to a fair trial. The victim has the right to present admissible evidence on the impact of the crime and the judge or jury is required to consider the evidence in sentencing the defendant. Evidence of victim impact includes a description of the nature and extent of the injury, an explanation of economic or property loss, and a request for restitution. At sentencing, the victim information form of any victim electing to receive notices regarding the defendant will be included with the final judgment and transmitted to the Department of Correction.

After the trial, the district attorney must notify the victim of the final disposition of the case and the defendant's right to appeal. The district attorney is also required to forward victim information to the Attorney General's Office, which will subsequently inform the victim of the appellate process and give notice to the victim of any appellate hearings. The investigative agency must also give the victim notice if the defendant is

released on bond pending appeal. If the defendant is awarded a new trial, the victim will have the same rights as were applicable during the original trial. If the defendant's conviction is overturned, and the district attorney tries the case again, the victim is entitled to the same rights afforded during the original trial.

The act sets forth the responsibilities of the agency that has custody or control over the defendant. The responsibilities include notifying the victim when the defendant might be eligible for release where the defendant is assigned for minimum custody or work release, and the victim's right to be notified of and to participate in reviews prior to the defendant's release. The victim must be notified of the defendant's escape, recapture, or death.

The Division of Adult Probation and Parole is required to notify the victim of any conditions for probation and any hearings affecting probation. The Division is also required to notify the victim of any restitution, modification, or change in supervision status including escape, recapture, termination, or death. These notifications must be provided within 30 days of the precipitating event, unless other specified.

When the Governor is considering commuting a defendant's sentence or pardoning a defendant, the Governor's office must notify the victim in a manner reasonably calculated to give the victim the opportunity to exercise his or her right to submit a statement for the Governor's consideration.

The act does not create a claim for damages against any governmental body or employee. It also provides that failure to provide the victim with any of the rights or services enumerated in the Victims' Rights Act may not be used as the basis for any relief by the defendant or victim in any criminal or civil action, except in suits for a writ of mandamus by the victim.

The act creates a new Article 81C in Chapter 15A for restitution. A judge at sentencing must determine whether, in addition to any other punishment, the defendant should be ordered to pay restitution to a victim. Restitution may be ordered in any criminal case where a victim has suffered injury or damages. The judge must order restitution if the defendant has committed an offense that triggers the victim's right to restitution under the Victims' Rights Act. The judge may also order restitution in any other criminal case. When deciding the amount of loss for which restitution may ordered, the court must consider the amount of loss suffered by the victim, such as necessary medical expenses, lost income, loss or damage to property, funeral expenses, or any measure of restitution specifically provided by law for the offense committed by the defendant. The act also sets out factors the court must consider in determining the amount of restitution the defendant will be ordered to pay, including the defendant's resources and ability to pay. The act provides that an order of restitution does not prevent a victim from bringing a civil action to recover damages, but the defendant is entitled to a credit against any civil judgment for restitution payments actually made.

Certain orders of restitution may be docketed and enforced as a civil judgment. Execution on any judgment is stayed pending appeal and while the defendant is paying restitution under probation. The clerk is directed to add the normal civil fees and interest to any payoff of the judgment. Interest would accrue only on the amount remaining unpaid upon termination or revocation of defendant's probation. Provisions regarding a debtor's exempt property do not apply to criminal restitution orders that are docketed as

civil judgments. Victims are entitled to restitution priority in receiving funds paid into the office of the clerk of superior court.

The act also makes various changes to the Victims Compensation Act as follows:

- Adds "household support loss" to the definition of economic loss recoverable under the act, and defines household support loss as support the victim would have received from his or her spouse. Household support loss is limited to $300/week for 26 weeks, and is available to an unemployed victim whose spouse is the offender who committed the crime that is the basis of the victim's claim;
- Increases from $200 to $300 per week the compensation for work loss;
- Extends from 1 year to 2 years the time in which a victim must file a claim;
- Increases limit on compensation to a victim and others from $20,000 to $30,000;
- Increases limit on short term medical expenses from $500 to $1,000;
- Permits up to $50 assistance to replace victim's clothing held for evidence;
- Allows the Victims Compensation Board to deny claims filed by persons convicted of A-E felonies within 3 years of the injury that is the basis of the claim.

The Conference of District Attorneys is directed to report to the General Assembly on projected costs of providing expanded services to victims of domestic violence. Agencies are urged to begin early implementation of the victim notification provisions, which are scheduled to become effective July 1, 1999.

The act also repeals provisions that currently provide for review of sentences of life imprisonment without parole. Presently sentences of life imprisonment without parole are subject to review after twenty-five years.

***Effective October 30, 1998*:**

- The requirement for the Conference of District attorneys prepare the report on costs for providing services to victims of domestic violence; and
- The request that agencies begin early implementation of victim notification.

Effective December 1, 1998:

- Changes to the Victims Compensation Fund. The changes apply to injuries occurring on or after that date.
- The definitions in G.S. 15A-830, the right to offer evidence of victim impact under G.S. 15A-833, the right to restitution in G.S. 15A-834, the changes to the criminal procedure act and other changes related to restitution. The changes apply to offenses on or after that date.
- Repeal of the review of life without parole sentences, applicable to offenses occurring on or after that date.

Effective July 1, 1999: The remainder of the act becomes applicable to offenses committed on or after July 1, 1999. (BC)

Use of Highway Patrol Aircraft, S.L. 1998-212, Sec. 19.6 (SB 1366, Sec. 19.6) amends G.S. 20-196.2, relating to the use of aircraft to discover certain motor vehicle violations, to delete a current provision which states that neither the observer nor the pilot is competent to testify in court as to a violation of the speeding laws. The law still authorizes the State Highway Patrol to use aircraft to discover violations of the laws relating to the operation of motor vehicles and rules of the road, and also declares it to be

State public policy that the aircraft should be used primarily for accident prevention and incident to the issuance of warning citations. This section became effective December 1, 1998. (KCB)

Community Service Technical Correction, S.L. 1998-217, Sec. 34 (SB 1279, Sec. 34) amends G.S. 143B-475.1 by codifying as subsection (f) language adopted in 1997 that was not codified because it did not comply with the coded bill drafting format. This subsection requires community service staff to report community service probation violations and establishes procedures for a hearing on the violations. It also authorizes the court to revoke a probationer's driver's license if the court finds a willful violation of the community service requirements. This act became effective October 30, 1998. (WR)

Modify Controlled Substances Tax, S.L. 1998-218 (SB 1554). See **TAXATION.**

Studies

Independent Studies, Boards, Etc. Created, Continued or Changed

Indigent Fund Study Commission, S.L. 1998-212, Sec. 16.5 (SB 1366, Sec. 16.5) directs the Administrative Office of the Courts to establish a Study Commission on the Indigent Persons' Attorney Fee Fund. The Commission shall study methods for improving the management and accountability of funds being expended to provide counsel to indigent defendants without compromising the quality of legal representation mandated by State and federal law. The Commission shall report its findings to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Subcommittees on Justice and Public Safety no later than May 1, 1999. This act became effective July 1, 1998. (SH)

Referrals to Existing Committees

1998 Governor's DWI Amendments, S.L. 1998-182 (SB 1336) as amended by S.L. 1998-217, Sec. 62 (SB 1279, Sec. 62) directs the Joint Legislative Education Oversight Committee to study the effects of the DWI forfeiture provisions and report to the 1999 session of the General Assembly.

Study Special Education Obligations of Department of Correction, S.L. 1998-212, Sec. 17.15 (SB 1366, Sec. 17.15) directs the Joint Legislative Education Oversight Committee and the Joint Legislative Corrections and Crime Control Oversight Committee to study the issue of limiting the obligations of the Department of Correction to provide special education and related services to incarcerated youth ages 18 through 21. The Committees shall report to the 1999 General Assembly. This act became effective July 1, 1998. (SH)

Juvenile Justice Reform Act, S.L. 1998-202 (SB 1260) as amended by S.L. 1998-217, Sec. 57 (SB 1279, Sec. 57) authorizes a number of studies. See summary above.

Study Reciprocity of Concealed Handgun Permits, S.L. 1998-212, Sec. 18.4 (SB 1366, Sec. 18.4) directs the Joint Legislative Corrections and Crime Control Oversight Committee to study the issue of allowing a person issued a valid concealed handgun permit in a reciprocal state, to carry a concealed handgun in North Carolina as if permitted in this State. The Committee shall report to the 1999 General Assembly. This provision also directs the Attorney General to prepare a list of those states that provide for concealed handgun permits equal to or more stringent than those required by North Carolina law. This section became effective July 1, 1998. (WR)

Referrals to Departments, Agencies, Etc.

Study of Public Defender Programs, S.L. 1998-212, Sec. 16.1 (SB 1366, Sec. 16.1) directs the Administrative Office of the Courts to study the efficiency and cost-effectiveness of the established public defender programs and to report the results, by April 1, 1999, to the Chairs of the Senate and House Appropriations Committee and Subcommittees on Justice and Public Safety, and to the Indigent Fund Study Commission. This section became effective October 30, 1998. (SH)

Study Fee Adjustment for Criminal Records Checks, S.L. 1998-212, Sec. 18.3 (SB 1366, Sec. 18.3) directs the Office of State Budget and Management (Office), in consultation with the Department of Justice to study the feasibility of adjusting the fees charged for criminal records checks conducted by the Division of Criminal Information of the Department of Justice. The Office shall report its findings to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Subcommittees on Justice and Public Safety no later than March 1, 1999. This section became effective July 1, 1998. (SH)

EDUCATION

[Kory Goldsmith (KG), Shirley Iorio (SI), Robin Johnson (RJ), Sara Kamprath (SK)]

Enacted Legislation

Public Schools

Revise Teacher Comp. Testing, S.L. 1998-5 (SB 1126), as amended by S.L. 1998-220, Sec. 14 and 15 (SB 1125, Sec. 14 and 15), amends the teacher competency assurance provisions of the Excellent Schools Act, S.L. 1997-221. The Excellent Schools Act required all certified staff in low-performing schools with assistance teams to take a general knowledge test. Individuals who did not pass the exam would have received up to two semesters of remediation. If an individual failed the test three times, the State Board of Education (Board) was required to begin dismissal proceedings. Beginning with the 1999-2000 school year, all certified staff in all low-performing schools would have been required to take the test.

S.L. 1998-5 amends G.S. 115C-105.38A and G.S. 115C-325(q)(a2) to provide that only teachers selected by an assistance team would be required to take the test at the end of the 1997-98 school year. In future school years, either the principal in a low-performing school or the assistance team assigned to a low-performing school may recommend that a certified staff member take the general knowledge exam. The principal or assistance team must make that recommendation if either finds the employee's performance is impaired due to a lack of general knowledge. Individuals who do not pass the general knowledge test will receive up to one semester of remediation consisting of either course work, training, or similar activities. After the remediation, the staff member may re-take the test. If the employee fails the test a second time, the Board must begin a dismissal proceeding.

S.L. 1998-5 also repeals G.S. 115C-326, which contained provisions relating to the evaluation of public school employees, and recodifies many of those provisions in a new Part 7 of Article 22 of Chapter 115C of the General Statutes (consisting of G.S. 115C-333 through G.S. 115C-335). These re-codified provisions include the following requirements: (1) a local board must use the evaluations adopted by the Board unless that board adopts a properly validated evaluation; (2) all probationary teachers must be evaluated annually, must be observed annually at least three times by a principal, and must be observed annually at least once by a teacher; (3) each local board must evaluate annually all other employees unless the board adopts a different policy; (4) the Board must develop new performance standards for certified employees that address improved student achievement, employee skills, and employee knowledge; (5) the Board must develop evaluations for principals and guidelines for evaluations for superintendents; and (6) the Board and the Board of Governors of The University of North Carolina must develop programs to train principals and superintendents in the proper administration of the State-adopted employee evaluations. The Board must report to the Joint Legislative

Education Oversight Committee by December 15, 1998, on the development of these evaluations and the guidelines for assessment teams.

G.S. 115C-334 directs local boards to create "assessment teams" that must be assigned to low-performing schools that do not receive State assistance teams. Assessment teams shall: (1) evaluate certified employees; (2) assist and train principals, assistant principals and superintendents in the evaluation of employees; (3) develop employee action plans; and (4) assist and train principals, assistant principals, and superintendents in creating employee action plans. The Board must develop guidelines for local boards to use when creating assessment teams.

G.S. 115C-333 requires the annual evaluation of all certified employees assigned to a low-performing school that does not receive an assistance team. The principal, an assistant principal, or an assessment team will evaluate teachers; the superintendent, the superintendent's designee, or an assessment team assigned to the school will evaluate principals and assistant principals. If an employee in a low-performing school receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, then the individual or team that did the evaluation shall recommend to the superintendent that the employee either be dismissed or given an action plan. The action plan must be completed within 90 instructional days or before the beginning of the next school year. Upon completing the action plan, the employee receives a second evaluation. If, at that time, the employee receives one unsatisfactory or more than one below standard rating on any function related to instructional duties, the superintendent must recommend that the employee be dismissed. The results of the second poor evaluation constitute substantial evidence of the employee's inadequate performance. S.L. 1998-5, as amended by S.L. 1998-220, also directs local boards to adopt policies requiring an action plan for any certified employee who receives a below standard or unsatisfactory rating on an evaluation when the superintendent is not recommending dismissal, demotion, or nonrenewal of that employee.

G.S. 115C-333(f) requires the local board to evaluate the superintendent if: (1) the local school administrative unit has fewer than 11 schools, at least one of which is identified as low-performing; (2) the local school administrative unit has fewer than 21 schools, at least two of which are identified as low-performing; or (3) the local school administrative unit has more than 20 schools, at least three of which are identified as low-performing. The local board must submit the evaluation to the State Board.

G.S. 115C-333(d) requires the local board of education to notify the Board if that board dismisses an employee for any reason except a reduction in force. The Board must provide other local boards of education with the names of dismissed employees. If a local board hires an individual who has been dismissed, the superintendent must (within 60 days) observe the employee, develop an action plan to assist the employee, and submit the action plan to the Board. If, on the next evaluation, the employee gets an unsatisfactory or below standard rating on any function related to the employee's instructional duties, the local board shall notify the Board. S.L. 1998-5 also amends G.S. 115C-296(d) to require the Board to revoke the certificate of an employee who has been dismissed, is subsequently hired by another school board, and receives an unsatisfactory or below standard rating on the next evaluation. If the employee gets at least a satisfactory rating on all the functions related to the employee's instructional duties, the

local board must notify the Board that the employee is in good standing and the Board may not subsequently notify local boards that the employee had once been dismissed.

G.S. 115C-333(e) contains an immunity provision. If an employee of a local board or the State Board of Education is sued for negligence arising out of conducting an evaluation, recommending an action plan, recommending dismissal, providing the name of a dismissed employee to the State Board, or reporting to local boards that an employee has been dismissed, the employer shall pay the employee's legal fees if the employee is found not liable. The immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing.

G.S. 115C-276 is amended to add to the list of superintendents' duties the following: (i) to provide for annual evaluations of all certified employees assigned to low-performing schools that do not receive an assistance team; (ii) to determine whether principals and assistant principals who conduct these evaluations are trained to do so and are trained to develop appropriate action plans; and (iii) to arrange for evaluators to receive appropriate training.

G.S. 115C-288 is amended by adding to the list of principals' duties the following: (i) to require the principal of a low-performing school that did not receive an assistance team to evaluate all certified employees at that school; (ii) to develop action plans; and (iii) to monitor an employee's progress under an action plan.

The act became effective June 9, 1998. (KG)

School Buses for Special Olympics, S.L. 1998-10 (SB 845) permits the use of State-owned trucks, vans, school and activity buses for the needs of the 1999 Special Olympics. The Department of Administration may not charge any fees for the use of the vehicles. The 1999 Special Olympics World Summer Games Organizing Committee must submit to the Department of Administration a list of the purposes for which the vehicles may be used. Vehicles may be used only for approved purposes. The State shall incur no liability for any damages resulting from the use of vehicles under this provision. Johnston, Wake, Orange and Durham County public school systems may permit the use of buses and activity buses for transportation of persons officially associated with the Special Olympics. S.L. 1998-10 took effect June 17, 1998; however, the authorizations contained in this act are effective only during the months of May, June, and July of 1998, and May, June, and July of 1999. (SI)

School Administrators Exam Fee, S.L. 1998-16 (HB 989) amends G.S. 115C-290.5(a) and G.S. 115C-290.7(a) to delete references to the $150 fee for the school administrators' exam that was to be collected by the North Carolina Standards Board for Public School Administration. The effective date is retroactive to January 1, 1998, which is the date those statutes went into effect and when the exam was first given to prospective applicants for school administrator certification. The Educational Testing Service, which developed and administers the exam, will now set and collect this fee. (RJ)

ABC's Plan/Consequences for Principals, S.L. 1998-59 (SB 1129) amends G.S. 115C-105.39 and G.S. 115C-325(q)(1) to revise the consequences for principals in low-performing schools. Previously, if the State Board of Education (Board) assigned an

assistance team to a low-performing school, the Board was required to suspend with pay any principal who had been assigned to that school for at least two years before the school was identified as low-performing. The Board was required to hold a hearing within 60 days to determine whether to dismiss the principal. The principal had to be dismissed unless the principal could establish that the factors leading to the identification of the school as low performing were not due to his or her inadequate performance.

The amendments require each local school administrative unit, by July 10 each year, to conduct a preliminary analysis of test results to identify which schools the Board may identify as low performing. Within 30 days of either a local board's or the Board's identification of a low-performing school, whichever occurs first, the superintendent must make one of the following recommendations to the local board concerning the principal of that school: (i) retain in the same position, but only if the principal has been in that position no more than two years; (ii) retain in the same position, but with a plan for remediation; (iii) demote; (iv) transfer, but not to another low-performing school; or (v) dismiss. The principal may be transferred to another principal position only if it is in a school classification (i.e., elementary, middle, or high school) where the principal previously demonstrated at least two years' success, if the local school administrative unit has a plan to evaluate and provide remediation to the principal for at least one year following the transfer, and if the parents of the students at the school to which the principal is to be transferred are notified. If the superintendent recommends dismissal or demotion, the superintendent must begin the process by reporting to the local board. Within 15 days of either (i) receiving the superintendent's notification that he or she intends to proceed under G.S. 115C-325 to dismiss or demote the principal or (ii) the board's decision concerning the superintendent's recommendation to retain or transfer the principal, but no later than September 30, the board must submit to the Board a notice of its action and the basis for that action.

The Board will take no further action if it does not assign an assistance team to the school or if it does assign an assistance team to that school, but the superintendent is proceeding under G.S. 115C-325 to dismiss or demote the principal. If, however, the Board does assign an assistance team to the low-performing school, the Board must review the local board's decision concerning the school's principal. The Board must vote to accept, reject, or modify the local board's decision to retain or transfer the principal. If the Board rejects or modifies the local board's action, the local board must implement the Board's recommendations concerning the principal's assignment or terms of employment, or the local board must ask the Board to reconsider its recommendations. If the local board asks for reconsideration, the Board must provide an opportunity for the local board to be heard. The Board must affirm or modify its original recommendations and shall notify the local board of its action upon reconsideration. The local board must implement the Board's final recommendations.

The Board, at any time, may suspend with pay any principal at a low-performing school to which it assigns an assistance team, pending a hearing before a panel of three Board members. The panel must recommend dismissal when the principal receives two negative evaluations from the assistance team or when the panel determines from available information, including the findings of the assistance team, that the school's low-performance is due to the principal's inadequate performance. The Board may dismiss

the principal (i) when the panel determines the school has failed to make satisfactory progress after an assistance team is assigned to that school and the assistance team recommends dismissal for one of the grounds for dismissal or demotion of a career employee under G.S. 115C-325(e)(1), or (ii) when the panel determines from available evidence before the assistance team evaluates the principal that the school's low-performance is due to the principal's inadequate performance. In all hearings, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance.

S.L. 1998-59 also amends G.S. 115C-105.37 to require the development of local plans designed to meet the needs of schools identified as low performing. Within 30 days of either the local board's or the State Board's identification of a low-performing school, the superintendent must submit to the local board a preliminary plan for addressing the needs of that school. Within 30 days of its receipt of this plan, the board shall vote to approve, reject or modify the plan. Before this vote, the board shall make the plan available to the public and must allow for written comments. G.S. 115C-105.37(b) is amended to require the notification that goes to parents when the State Board identifies a low-performing school to include information about the plan. Within 15 days of the board's vote, it must submit its plan to the State Board for review. The State Board shall review plans expeditiously and, if appropriate, offer recommendations to modify them. The local board must consider the State Board's recommendations.

The act took effect July 24, 1998, and applies to principals on or after that date. (KG)

Amend Education Finance Act, S.L. 1998-124 (SB 1556) adds elementary and secondary private educational institutions to the Educational Facilities Finance Act. Previously, the act covered only private institutions of higher education. A qualifying institution may obtain tax-exempt financing to acquire, construct, and improve educational facilities.

Tax-exempt financing may include revenue bonds issued by the Educational Facilities Finance Agency or other forms of debt, but does not include any financing that pledges the faith or credit of the State or any political subdivision. The educational institution must pay for the entire cost of the financing and of the facility being financed.

Tax-exempt financing is available for capital facilities that are related to or useful to an educational institution and will be operated to serve and benefit the public. The financing also may cover land acquisition, landscaping, furniture, equipment, and other administrative expenses related to construction or acquisition of a project.

This act became effective August 27, 1998.

ABC's Plan for DHHS Schools, S.L. 1998-131 (HB 1477), as amended by S.L. 1998-212, Sec. 12.3C(c) (SB 1366, Sec. 12.3C(c)), makes numerous changes to improve the quality of education and safety in the State's residential schools. The act directs the Secretary of Health and Human Services (Secretary) to alter the structure and functions of residential schools, beginning with Governor Morehead and the three State schools for the deaf (the four residential schools), in order to emphasize the basics in connection with the education program offered at the four schools. The Secretary must report proposed

legislation to implement these changes to the Public School Study Commission and to the cochairs of the appropriations subcommittees on Health and Human Services by November 1, 1998, and November 1, 1999.

Effective retroactively to March 1, 1998, the act directs the Secretary to change the administrative organization and mission of the four residential schools and of the Department of Health and Human Services (DHHS) as they pertain to the four residential schools. The Secretary may extend this administrative reorganization to other residential schools. S.L. 1998-131 sets the following goals: (i) 50% decrease in employee positions currently assigned to the Division of Services for the Blind and the Division of Services for the Deaf and Hard of Hearing for the purpose of providing assistance to, management of, or education programs in the residential schools; (ii) 50% decrease in residential school employee positions currently filled by administrators or supervisors; and (iii) 50% redirection, by January 1, 1999, to the instructional programs in the four residential schools of the DHHS budget related to those schools. The Secretary must report to the cochairs of the appropriations subcommittees on Education and Health and Human Services by April 15, 1999, on the reorganization and redirection of funds.

The Secretary shall consult with the State Board of Education (Board) in the implementation of the act as it applies to improvements in the quality of education at the schools. The Secretary also is directed to consult with the chairs of the appropriations subcommittees on Education and Health and Human Services.

DHHS may use appropriated funds to contract for outside consultants and assistance to help the Secretary carry out his duties under this act. The State Auditor, the Office of State Budget and Management, and other appropriate agencies are directed to provide consultation as requested by the Secretary.

Closely tracking miscellaneous public school statutes, including those governing accountability for the public schools (the ABC's Program), the act establishes "Part 3A. Education Programs in Residential Schools" as follows:

(1) G.S. 143B-146.1 states the mission of the General Assembly concerning the residential schools and defines terms.

(2) G.S. 143B-146.2 requires the four residential schools to participate in the ABC's Program; authorizes the Secretary, in consultation with the Board and the General Assembly, to designate other residential schools that must participate in that program; directs the Board to adopt guidelines to implement the ABC's Program in the residential schools; and directs the Secretary to provide maximum flexibility to participating schools in their use of funds.

(3) G.S. 143B-146.3 directs the Board to set annual performance standards for each participating school.

(4) G.S. 143B-146.4 provides that the superintendent, principals, assistant principals, teachers, instructional personnel, instructional support personnel, and teacher assistants are eligible for the ABC's bonus when their school meets or exceeds the goal set by the Board; however, these individuals may choose to vote to spend the money in accordance with a plan.

(5) G.S. 143B-146.5 requires the Board to design and implement a plan to identify low performing schools on an annual basis. Low performing schools are those in which there is a failure to meet the minimum growth standards, as set by the Board, and a

majority of students are performing below grade level. (This is the same definition that is used in the public schools.) G.S. 143B-146.5 also requires low-performing schools to notify parents when so identified. The Secretary must, by July 10 of each year, conduct a preliminary analysis of test results to identify which schools the Board may identify as low performing. Within 30 days of the initial identification, whether by the Secretary or the Board, of a low-performing school, the Secretary must develop a preliminary plan for addressing the needs of that school. Before the Secretary adopts this plan, he shall make the plan available to the residential school personnel and the parents and guardians of students at that school, and must allow for written comments. Within five days of the Secretary's adoption of the plan, he must submit it to the Board for its review. The Board shall review plans expeditiously and, if appropriate, offer recommendations to modify them. The Secretary must consider the Board's recommendations.

(6) G.S. 143B-146.6 authorizes the Board to assign assistance teams to low-performing schools. Teams have the same duties as when assigned to a public school, except they will report to the Secretary as well as to the Board.

(7) G.S. 143B-146.7 requires the Secretary, within 30 days of his identification of a low-performing school or within 30 days of the Board's identification of a low-performing school, whichever occurs first, to take one of the following actions concerning the superintendent of that school: (i) retain in the same position without a plan for remediation, but only if the superintendent has been in that position no more than two years; (ii) retain in the same position with a plan for remediation; or (iii) transfer to another school, so long as it has not been identified as low-performing; or (iv) proceed under the State Personnel Act to dismiss or demote the superintendent. The superintendent may be transferred to another superintendent position only if it is one in which the superintendent previously demonstrated at least two years' success, if there is a plan to evaluate and provide remediation to the superintendent for at least one year following the transfer and if the parents of the students at the school to which the superintendent is to be transferred are notified. The Secretary, at any time, may dismiss any superintendent at a low-performing school to which an assistance team is assigned. The Secretary must dismiss any superintendent who receives two negative evaluations from the assistance team or when the Secretary determines from available information, including the findings of the assistance team, that the school's low-performance is due to the superintendent's inadequate performance. The superintendent may be dismissed when the Secretary determines the school has failed to make satisfactory progress after an assistance team is assigned to that school and the assistance team recommends dismissal, or when the Secretary determines from available evidence before the assistance team evaluates the superintendent that the school's low-performance is due to the superintendent's inadequate performance. The burden of proof is on the superintendent to establish that the factors leading to the school's low performance were not due to his or her inadequate performance. The consequences for certificated instructional personnel are the same as for those in public schools. This includes the requirements of dismissal after two negative evaluations by the assistance team, the competency test, and subsequent remediation. This section also requires the Secretary to dismiss any non-certificated instructional personnel who receive two negative evaluations from the assistance team. The Secretary may dismiss these individuals when he determines the

school has failed to make satisfactory improvement after an assistance team was assigned to it and the assistance team recommends dismissal based on a reason that constitutes just cause for dismissal under the State Personnel Act. Dismissal of non-certificated personnel will be done in accordance with the State Personnel Act.

(8) G.S. 143B-146.8 requires annual evaluations and action plans similar to those required for low-performing public school personnel, and requires annual evaluations of the superintendents.

(9) G.S. 143B-146.9 requires assessment teams for low-performing schools that do not receive assistance teams.

(10) G.S. 143B-146.10 requires the Board, in consultation with the Secretary, to develop uniform performance standards and criteria for evaluating certificated personnel, and directs the Secretary to develop guidelines for evaluating the superintendents.

(11) G.S. 143B-146.11 requires all residential schools, including those that are not participating in the ABC's Program, to adopt a school calendar with a minimum of 180 instructional days and 1000 instructional hours covering at least nine calendar months. A school must consult with parents, personnel, and the local school administrative unit in which it is located when it develops its calendar.

(12) G.S. 143B-146.12 requires the residential schools that are participating in the ABC's Program to develop and implement a school improvement plan. Initial plans shall be developed during the 1998-99 school year and shall be implemented by the beginning of the 1999-2000 school year. Each school improvement plan is to developed by a team consisting of the superintendent, at least five parents (two of whom may be school employees), instructional personnel, and residential life personnel assigned to the school. Parents must be elected by parents, and those who are not employees must receive travel and subsistence expenses and may, if appropriate, receive a stipend. The plan must include strategies to improve student performance. These strategies include a plan for the use of funds made available by the Secretary to meet the school's ABC's goals, a comprehensive plan to encourage parental involvement, and a safe school plan that includes components similar to those required for public schools (these would allow for rewards to superintendents, if money is made available for that purpose). Development and approval of school improvement plans are the same as for public school plans.

(13) G.S. 143B-146.13 directs the Secretary to develop, by December 15, 1998, a school technology plan for all the residential schools. The plan must meet the requirements of the State school technology plan and will be developed and approved in the same manner as local school plans.

(14) G.S. 143B-146.14 requires the Secretary to establish a procedure to resolve disputes between the schools and parents or guardians. An appeal must be available to the Secretary or his designee.

(15) G.S. 143B-146.15 requires the superintendents of the residential schools to report to local law enforcement specific criminal acts when the superintendents have personal knowledge or actual notice from school personnel that an enumerated criminal act occurred on school property.

(16) G.S. 143B-146.16 directs the Secretary to require an applicant for a residential school personnel position to be checked for criminal history before the applicant is offered an unconditional job. Applicants shall not be required to pay for these record checks. Residential schools may employ an applicant conditionally while the Secretary is checking the person's criminal history and making a decision based on the results. The Secretary must provide to the Board any criminal history he receives on a person who is certificated or licensed by the Board. The Board must then review the history and determine whether to revoke the person's certificate or license.

G.S. 115C-325 is amended to add a new subsection (p1) to provide for the Secretary's dismissal of certificated instructional personnel in low-performing residential schools.

G.S. 115C-296 is amended to authorize the Board to revoke the certificate of a teacher or administrator of a low-performing residential school upon notification from the Secretary. The act adds the Secretary to the State School Technology Commission and the Task Force on School-Based Management under the State Board of Education.

The Secretary must adopt policies and offer training opportunities to ensure that personnel who provide direct services to children in the three schools for the deaf become proficient in sign language within two years of employment or implementation of this act, whichever occurs last. This requirement does not apply to preschool personnel in any oral, auditory, or cued speech preschool. The act directs the Department of Public Instruction, the UNC Board of Governors, and the State Board of Community Colleges to offer and communicate the availability of professional development opportunities to residential school personnel.

The act directs the Commission for Health Services to adopt rules to include newborn hearing screening in the Newborn Screening Program under G.S. 130A-125. It also directs the State Auditor to conduct a fiscal audit of the Division of Services for the Deaf and Hard of Hearing. The Auditor shall report to the General Assembly by March 1, 1999, on the results of this audit.

The four residential schools must prioritize their capital needs in a three-year plan. They must submit their plans to the Secretary, who will prioritize the needs of these schools and submit to the General Assembly a three-year plan to address them.

The Secretary must adopt policies to ensure that students of residential schools are given priority for independent living facilities.

The act authorizes the expenditure of funds appropriated for fiscal year 1998-99 to provide assistance teams to be assigned to four schools.

S.L. 1998-131 took effect July 1, 1998. The ABC's Program will apply to grades K-8 in the four residential schools beginning with the 1999-2000 school year. This means their baselines will be set at the end of the 1998-99 school year, and their personnel will be subject to rewards and penalties at the end of the 1999-2000 school year. The Secretary, in consultation with the General Assembly and the Board, shall recommend beginning dates of applicability for the remaining grades in those four schools and for other residential schools. See also "Studies" under this heading. (RJ)

School Construction Bidding, S.L. 1998-137 (HB 1327) amends G.S. 143-128 to allow local boards of education to use single-prime, separate-prime, or both forms of bidding

for construction projects over $500,000. A local school administrative unit must award the contract to the lowest responsible bidder under the single-prime system or the separate-prime system. All other provisions of G.S. 143-128 will apply. Under prior law, local boards could use either or both forms of bidding for projects under $500,000. However, for projects over $500,000, they generally had to use separate-prime and could additionally use single-prime. S.L. 1998-137 took effect September 11, 1998. (SI)

Teacher Certification Fees, S.L. 1998-167 (SB 1594) amends G.S. 115C-296 by adding a new subsection that allows the State Board of Education to impose the following schedule of fees for teacher certification and administrative changes: (1) $30 - application for demographic or administrative changes to a certificate, a duplicate certificate, or for copies of documents in the certification files; (2) $55 - application for a renewal, extension, addition, upgrade, and variation to a certificate, as well as for initial application for new, in-state approved program graduates; and (3) $85 - initial application for out-of-state certificate, and all other applications. The act became effective October 2, 1998. (SI)

1998 Governor's DWI Amendments, S.L. 1998-182 (SB 1336), as amended by S.L. 1998-217, Sec. 62 (SB 1279, Sec. 62). See **CRIMINAL LAW**.

Public School Purchasing Flexibility, S.L. 1998-194 (HB 1371) amends G.S. 115C-522.1 to expand to all local school administrative units the purchasing flexibility that was given to 12 units as part of a pilot program in 1996. Local school administrative units may purchase supplies, equipment, and materials from noncertified sources if the following conditions are met: (i) the purchase price, including the cost of delivery, is less than the cost under the State term contract; (ii) the cost of the purchase does not exceed the bid level benchmark; (iii) the items are the same or substantially similar in quality, service, and performance as items available under State term contracts; (iv) the local school administrative unit maintains written documentation of the cost savings; and (v) the local school administrative unit informs the Department of Administration of any purchases that are substantially equivalent to and not the same as items under State term contracts. The State Board of Education shall adopt rules to exempt supplies, equipment, and materials related to student transportation. The section became effective October 24, 1998. (SK)

Juvenile Justice Reform Act, S.L. 1998-202 (SB 1260), as amended by S.L. 1998-217, Sec. 57 (SB 1279, Sec. 57). See **CRIMINAL LAW**.

Extra Pay for Mentor Teachers, S.L. 1998-212, Sec. 9.3 (SB 1366, Sec. 9.3) expands the mentor program. Last year, mentors were provided only to first year teachers. This year mentors also will be provided to second year teachers. Section 9.3 authorizes the State Board of Education to evaluate the mentor program. Section 9.3 took effect July 1, 1998. (RJ)

Aid to Low-Performing and At-Risk Schools, S.L. 1998-212, Sec. 9.4(d) (SB 1366, Sec. 9.4(d)) directs the principal of a low-performing or at-risk school to develop, in consultation with the faculty and site-based management team, a plan for expending funds appropriated to improve these schools. The plan must include whole staff training. The principal must submit the plan to the superintendent, and the local board must approve the plan. The plan then must be submitted to the State Board of Education, which must review and either accept or reject the plan within 15 days. The State Board must report to the Joint Legislative Education Oversight Committee by January 1, 1999, on these plans and on the use of these funds. Section 9.4 became effective July 1, 1998. (RJ)

ABC's High School Accountability Model, S.L. 1998-212, Sec. 9.5 (SB 1366, Sec. 9.5) directs the State Board of Education (Board) to continue to improve its standards for determining whether high schools meet or exceed their projected levels of improvement in student performance. Section 9.5 also urges the Board to consider including in its standards: (i) improvement in individual students' performance; (ii) dropout rates; and (iii) student enrollment and achievement in courses required for graduation, advanced placement courses, or other upper level courses. Section 9.5 took effect July 1, 1998. (RJ)

School Activity Bus Use Authorized Under Certain Circumstances, S.L. 1998-212, Sec. 9.9 (SB 1366, Sec. 9.9) amends G.S. 66-58(c), the Umstead Act, to allow a nonprofit corporation or a unit of local government to use public school activity buses to provide transportation for school-aged and preschool-aged children, their caretakers, and their instructors to and from activities on the property of the corporation or local government, as applicable. The local board of education that owns the bus must ensure that the driver is licensed to operate the bus and that the corporation or local government, as applicable, has adequate liability insurance. Section 9.9 became effective July 1, 1998. (RJ)

School Board Quick Take, S.L. 1998-212, Sec. 9.10 (SB 1366, Sec. 9.10) amends G.S. 40A-42(a) to add local boards of education and any combination of boards of education to the list of units of local government that acquire title to property and the right to immediate possession when they acquire property by condemnation for specific purposes. The local boards must be acquiring the property for school facilities as allowed under G.S. 115C-517. Section 9.10 took effect July 1, 1998. (RJ)

Charter Schools, S.L. 1998-212, Sec. 9.14A (SB 1366, Sec. 9.14A) amends Chapter 135 of the General Statutes to require each charter school board of directors to make an irrevocable, written election as to whether it will become a participating employer so that its employees may join the State Retirement System, the State Health Plan, or both. Charter schools whose boards do not elect to participate in either or both systems will continue to receive the funds for the employers' contributions to these plans. The amendments to Chapter 135 also allow charter school employees, upon their subsequent return to a public school or State employment, to "buy back" years of service for the time they were employed in a charter school whose board of directors did not elect to become

a participating employer in the Retirement System. To be eligible for this "buy-back", an employee will be required to have at least five years of creditable service. Section 9.14A became effective October 30, 1998, and applies to charter schools currently in operation and those to be approved in the future. (RJ)

Testing, S.L. 1998-212, Sec. 9.15(b) (SB 1366, Sec. 9.15(b)) amends G.S. 115C-174.11(c)(1) to direct the State Board of Education (Board) to develop and implement a study that will create an exception to the general prohibition on standardized testing in kindergarten, first grade, and second grade. This study will allow 12 local school administrative units to volunteer to administer a standardized test at the end of second grade in order to establish the baseline used to measure academic growth at the end of third grade. Currently, the Board administers the third grade end-of-grade test at the beginning of third grade for the purpose of establishing this baseline. If the Board determines the administration of a standardized test at the end of second grade is more reliable for the purpose of establishing the baseline, then the Board may change the test date for additional school units. The amendment specifies that the baseline measurements administered at the end of second grade are not public records. The Board must report to the Joint Legislative Education Oversight Committee by October 15, 2000, on the results of this study. Section 9.15(b) took effect July 1, 1998. (RJ)

Substitute Teachers, S.L. 1998-212, Sec. 9.16 (SB 1366, Sec. 9.16) amends G.S. 115C-12(8) to change the method of determining substitute teacher pay. Under former law, the State Board of Education was directed to establish the pay. The amendment sets the minimum pay for substitutes who hold a teaching certificate to 65% of the daily pay rate of an entry-level teacher with an "A" certificate and for substitutes who do not hold a teaching certificate to 50% of that daily pay rate. The pay of noncertified substitutes cannot exceed the pay of certified substitutes. Section 9.16 also allows local boards of education to use State funds for substitutes to hire full-time substitutes. Local boards with higher than the State average number of substitute teacher days must determine the reason for the high average and develop a plan to decrease their average. Section 9.16 becomes effective January 1, 1999. (RJ)

Tort Liability/School Buses, S.L. 1998-212, Sec. 9.17 (SB 1366, Sec. 9.17) amends G.S. 115C-257 to increase from $600 to $3,000 the amount the Attorney General may pay for reasonable medical expenses for each pupil accidentally injured or killed while riding on, boarding, or alighting from a school bus operated by a local school administrative unit. Section 9.17 also amends G.S. 143-300.1 to provide for claims of negligence of transportation safety assistants and monitors on school buses to be heard by the Industrial Commission and for these claims to be defended by the Attorney General. Section 9.17 took effect July 1, 1998, and applies to claims arising on or after that date. (RJ)

School Calendar, S.L. 1998-212, Sec. 9.18(b) (SB 1366, Sec. 9.18(b)) amends G.S. 115C-84.2 to require local boards of education and individual schools to give at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave.

A teacher may waive this notice. Beginning with the 1999-2000 school year, the number of consecutive days during which teacher attendance cannot be required increases from 30 to 42. A local board or principal may request that a teacher elect to work on one of these 42 days instead of on another scheduled workday. Section 9.18(b) took effect July 1, 1998. (RJ)

Teaching Fellows Program, S.L. 1998-212, Sec. 9.19(a) (SB 1366, Sec. 9.19(a)) amends G.S. 115C-363.23A to increase from $5,000 to $6,500 the amount of the four-year Teaching Fellows scholarship loans. Section 9.19(a) became effective July 1, 1998. (RJ)

Limited English Proficiency, S.L. 1998-212, Sec. 9.20 (SB 1366, Sec. 9.20) directs the State Board of Education to: (i) develop guidelines for identifying and serving students with limited proficiency in the English language; (ii) review and revise, if needed to meet local needs, its certification requirements for teachers of these students; (iii) coordinate with the Board of Governors of The University of North Carolina (BOG) in order to provide certification programs throughout the State; (iv) identify or develop programs for instructional personnel to enable them to serve these children in the regular classroom; and (v) collaborate with the BOG and the State Board of Community Colleges in order to provide these programs for instructional personnel at various locations in the State. This section also amends G.S. 115C-238.29H(a) to direct the State Board of Education to allocate to a charter school an additional amount of funds for children who have limited proficiency in the English language and who attend that school. Section 9.20 became effective July 1, 1998. See also Studies below. (RJ)

Driving Eligibility Certificates, S.L. 1998-212, Sec. 9.21 (SB 1366, Sec. 9.21) amends G.S. 20-11(n)(4) and G.S. 115C-566 to expand the list of school personnel who may sign driving eligibility certificates to include persons who provide academic instruction in the home that a court determined before July 1, 1998, complied with the compulsory attendance law. Section 9.21 took effect July 1, 1998. (RJ)

Building Level Reports on School Funding, S.L. 1998-212, Sec. 9.23 (SB 1366, Sec. 9.23) amends G.S. 115C-12(18) to add a new subsection that requires the State Board of Education to modify the Uniform Reporting System to provide information on the use of funds at the unit and school building level. This information must enable the General Assembly to determine expenditures for personnel at the unit and school level, and must allow for tracking of other specified expenditures. The revised System is to be implemented beginning with the 1999-2000 school year. Section 9.23 took effect July 1, 1998. (RJ)

Dues Deduction for Retirees, S.L. 1998-212, Sec. 9.24 (SB 1366, Sec. 9.24) adds a new G.S. 135-18.8 to Article 1 of Chapter 135 of the General Statutes. This new section allows members of a domiciled employees' association of at least 2,000 members, most of whom are State or public school employees, to authorize dues deductions from their retirement benefits payable to the applicable association. This plan of deductions is

voided if the association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. Section 9.24 becomes effective January 1, 1999, and applies to retirement benefits paid on or after that date.

Replacement of Student Information System, S.L. 1998-212, Sec. 9.26 (SB 1366, Sec. 9.26) directs the State Board of Education (Board) to develop a replacement for the current Student Information System (System) to provide information with respect to operations, personnel, and hardware in the most cost-effective manner. The Board must emphasize applications that maintain student records and accountability data, and that facilitate the transfer of student records to other school units or institutions of higher education. The System must follow guidelines set by the Information Resources Management System. The Board may develop pilots to test the system. The Board must provide periodic reports on the development of the new system to the Joint Legislative Education Oversight Committee, and must report to the 1999 General Assembly on the implementation of the pilot projects. Section 9.26 took effect July 1, 1998. (RJ)

Early Childhood Education and Development Initiatives Reform, S.L. 1998-212, Sec. 12.37B (SB 1366, Sec. 12.37B). See **CHILDREN AND FAMILIES**.

Permit Retired Teachers to Work as Substitute Teachers in Public Schools or as Teachers in Low-Performing Schools Without Losing Retirement Benefits, S.L. 1998-212, Sec. 28.24 (SB 1366, Sec. 28.24), as amended by S.L. 1998-217, Sec. 67 and 67.1 (SB 1279, Sec. 67 and 67.1), amends G.S. 135-3(8)c. to exclude the following earnings from the computation of retirement benefits of a public school teacher who has been retired for at least 12 months and who has not been employed, other than as a substitute teacher, with a public school for at least 12 months: (i) earnings while employed on a substitute or interim basis in a public school; (ii) earnings while employed in the teacher's area of certification in a public elementary or middle school designated as low-performing where at least 48% of the students were below grade level during at least one of the two years before the designation or in a high school designated as low-performing, and while continuing to be employed in that school for the two school years after the removal of this designation; or (iii) earnings while employed in the teacher's area of certification in a geographical area where the State Board of Education has determined there is a shortage of teachers in that area of certification. A person who is employed under this section is considered a probationary teacher. The Department of Public Instruction must certify to the Retirement System that a beneficiary is employed under this section. Section 28.24 also amends G.S. 115C-316 by adding a new subsection that prohibits local boards of education from paying a retired teacher more than the employee would have received on the teacher salary schedule, excluding longevity, if the employee had not retired. G.S. 115C-325(a) is amended by adding a new subdivision that defines a retired teacher as (i) a Retirement System beneficiary who has been retired at least 12 months, (ii) one who has not been employed in any capacity, other than as a substitute teacher, with a local board of education for at least 12 months, (iii) one who had satisfactory performance, as determined by a local board of education, during the last year of employment by that board, and (iv) one who is employed to teach as a probationary

teacher under G.S. 135-3(8)c. Section 28.24 becomes effective January 1, 1999, and expires June 30, 2003. (RJ)

Sales Tax Refund for Schools, S.L. 1998-212, Sec. 29A.4 (SB 1366, Sec. 29A.4). See **TAXATION.**

Civil Penalties Law Clarified, S.L. 1998-215 (SB 882), as amended by S.L. 1998-217, Sec. 60 (SB 1279, Sec. 60), amends the statutes of a number of State agencies by requiring these agencies to deposit the clear proceeds of specified civil penalties and forfeitures into the Civil Penalty and Forfeiture Fund (Fund). In 1997, the General Assembly created the Fund, which consists of the clear proceeds of all civil penalties and civil forfeitures that are collected by a State agency and that are payable to the county school fund under Section 7 of Article IX of the State Constitution. These proceeds are transferred from the Fund to the State School Technology Fund, and then they are allocated to local school units on the basis of average daily membership. S.L. 1998-215 became effective October 31, 1998. (RJ)

Miscellaneous Education Changes, S.L. 1998-220 (SB 1125) makes the following changes, many of which are clarifying, to the laws governing the public schools: (i) amends G.S. 115-102.5(b) to substitute President Pro Tempore for President of the Senate as the person who appoints one of the cochairs of the School Technology Commission; (ii) amends G.S. 115C-105.36(b) to encourage school systems to make available ABC's bonuses to teachers and teacher assistants by each employee's first regular paydate following the school systems' receipt of the funds, and to require that the funds be made available no later than the second regular paydate; (iii) for ABC's bonuses at the end of the 1998-99 school year and thereafter, deletes the authority for the teachers and teacher assistants to develop and vote on a plan to use the funds for any other lawful purpose; (iv) amends G.S. 115C-244 and G.S. 115C-245 to clarify that the superintendent or superintendent's designee develops the bus assignment plan; (v) amends G.S. 115C-290.8 to exempt from the school administrators exam those individuals who obtained or renewed a State administrator/supervisor certificate at any time during the five years preceding January 1, 1998, even if they were not engaged in school administration during those years, and to direct the State Board to adopt policies governing the requirements for certification of out-of-state school administrators; (vi) amends G.S. 115C-174.11(b) to move the competency test from tenth to ninth grade in order to provide an additional year to offer remediation to students who fail the exam; (vii) amends G.S. 115C-391 to authorize the superintendent or the local board to suspend for one year a student who brings a gun onto school property, to authorize the superintendent, upon the recommendation of the principal, to remove to an alternative educational setting a student who assaults another person on school property or at a school-related or -sponsored activity, and to allow these decisions to be appealed to the local board, subject to judicial review; (viii) amends G.S. 115C-276(r) to clarify that the superintendent must keep data on students who are suspended more than 10 days; (ix) amends G.S. 115C-74.11(c) to require students who fail the eighth grade end-of-grade tests to be provided with remedial assistance calculated to prepare these students to pass the competency test; (x) amends

G.S. 115C-403(b) and 115C-288 to prohibit (except as is allowed under the federal Family Educational Rights and Privacy Act) principals or their designees from withholding a student record upon the receipt of a request from a school to which the student is transferring; and (xi) amends G.S. 115C-287.1 to allow the term of initial school administrator contracts, beginning with those entered into on or after the effective date, to be for less than 12 months if the contract becomes effective on or before September 1. See also Studies below. S.L. 1998-229 took effect November 5, 1998. (RJ)

Teacher Certification Waivers, S.L. 1998-226 (SB 1124) creates a new section, G.S. 115C-296.1, to provide an alternative method of teacher certification when a local board of education determines there is or anticipates there will be a shortage of qualified teachers with North Carolina teaching certificates. If the board makes that determination, the board may employ: (i) individuals with out-of-state teaching certificates that do not meet North Carolina certification requirements; and (ii) individuals with subject matter knowledge and relevant experience, but no teaching certificate. Any individual employed under this act must have at least a bachelor's degree and be eligible to be re-employed by his or her prior employer. If the individual is certified to teach in another state, the person must have at least one year of relevant classroom teaching experience and the out-of-state certification must relate to the grade or subject matter the individual is hired to teach. If the individual has one year of full-time classroom teaching experience at a university, college or community college, the experience must be relevant to the grade or subject matter the individual is hired to teach. If the individual has three years of other experience, the individual's college degree and experience must be relevant to the grade or subject matter the individual is hired to teach. The local board may employ this individual for one year under a provisional teaching certificate. If the individual is employed, the local board must: (i) develop a plan to determine the individual's competence as a teacher; (ii) review the performance of students taught by the individual; (iii) provide a mentor teacher if the individual does not have at least one year of classroom teaching experience; (iv) have a school administrator observe the individual at least three times during the year; (v) have a teacher observe the individual at least once during the year; and (vi) have a school administrator evaluate the individual at least once during the year. An individual who had been certified to teach in another state and who is employed under this section is eligible to receive a North Carolina teaching certificate upon re-employment by the local board. An individual who was not previously certified is eligible for North Carolina certification if the individual passes the exams required for certification within the first year of employment under this section and is reemployed by the local board. If an individual who was not previously certified does not pass the certification exams during the first year of employment, then the current requirements for lateral entry apply. Those requirements allow individuals up to five years to complete the course work and pass the exams required for certification. S.L. 1998-226 also directs local boards of education to report semi-annually the number of individuals employed as teachers under this act. S.L. 1998-226 took effect November 5, 1998, but will expire September 1, 2002. However, it will remain in effect for any individual employed under the act before September 1, 2002. (RJ)

Community Colleges

Community College Purchasing Flexibility, S.L. 1998-68 (HB 1368) creates a new section, G.S. 115D-58.14, which allows a community college to purchase supplies, equipment, and materials from noncertified sources if the college can find the same item for less, including cost of delivery, and the cost of the purchase does not exceed the bid level benchmark. The State Board of Community Colleges and the Department of Administration must develop policies and procedures for monitoring these purchases. S.L. 1998-68 took effect July 30, 1998. (SI)

Community College Sale of Donated Land, S.L. 1998-72 (HB 1541), as amended by S.L. 1998-217, Sec. 39 (SB 1279, Sec. 39), amends G.S. 115D-15 by adding a new subsection that allows a board of trustees to sell or lease property donated to the college and use the proceeds for the educational purposes specified by the donor. The board of trustees must use the procedures cities and counties use when selling property. Any sale or lease must comply with rules adopted by the State Board of Community Colleges. S.L. 1998-72 became effective July 30, 1998. (SI)

Community Colleges' Lease Purchase Authority, S.L. 1998-111 (HB 1369) creates a new section, G.S. 115D-58.15, to allow a board of trustees of a community college to enter into lease purchase or installment purchase contracts for equipment. Contracts for more than $100,000 or for a term of more than three years are subject to review and approval. If the source of funds for payment of the obligation by the community college is intended to be local funds, the contract must be approved by resolution of the tax-levying authority. If the source of funds is intended to be State funds, the contract must be approved by resolution of the State Board of Community Colleges. The State Board of Community Colleges must adopt policies and procedures governing the review and approval process. S.L. 1998-111 took effect August 20, 1998. (SI)

Reporting Requirements, S.L. 1998-212, Sec. 10.8 (SB 1366, Sec. 10.8) directs the State Board of Community Colleges to develop an action plan to improve the timelines and accuracy of the data that are required to be reported to the State Board by each institution of the North Carolina Community College System. The plan must include withholding State funds from the institution if an institution is not in compliance. This plan must be approved and implemented by October 30, 1998. Section 10.8 became effective July 1, 1998. (SI)

Community College Tuition Waiver, S.L. 1998-212, Sec. 10.12 (SB 1366, Sec. 10.12) states the intent of the General Assembly to provide a tuition waiver for up to two years, to the extent that funds are appropriated expressly for that purpose, to deserving State high school graduates who enroll full-time in a North Carolina community college within six months of graduation. Section 10.12 became effective July 1, 1998. (SI)

NCSU Centennial Campus, S.L. 1998-159 (HB 1737) amends the definition of the Centennial Campus of North Carolina State University at Raleigh (Centennial Campus) found in G.S. 116-198.33(4) to include certain specific properties, including the College of Veterinary Medicine. G.S. 116-198.34 is amended to delete the 40 year limit on land and building leases at Centennial Campus. Rental agreements for space in buildings on Centennial Campus made for 10 years or less do not require the approval of the Governor and Council of State but are subject to approval by the Board of Governors of The University of North Carolina (BOG). G.S. 116-198.34 is also amended by adding a new subdivision (8a) to clarify that the BOG has the power to designate the real estate and appurtenant facilities that comprise the Centennial Campus. G.S. 146-30 is amended to provide that no service charge shall be deducted for the State Land Fund from the proceeds of any lease of State lands designated as part of Centennial Campus. G.S. 146-27 is amended to provide that 99 years is the maximum length for any lease or rental of land owned by the State. The section became effective September 28, 1998. (SK)

Incentive Scholarship Program for Native Americans, S.L. 1998-212, Sec. 11.2 (SB 1366, Sec. 11.2) amends Section 17.3(a) of the Chapter 769 of the 1993 Session Laws so that the scholarships under the Incentive Scholarship Program for Native Americans have a maximum value of $3,000 per recipient per academic year and are to be awarded after all other need-based grants have been included in the recipient's financial aid package. The maximum amount of a scholarship may not exceed the cost of attendance budget used to calculate the financial aid less the other need-based aid received. The section became effective July 1, 1998. (SK)

East Carolina Doctoral II Classification, S.L. 1998-212, Sec. 11.6 (SB 1366, Sec. 11.6) allocates funds to East Carolina University (ECU) to make enhancements necessary to meet the needs of a Doctoral II institution, including adding additional faculty, increasing faculty salaries, and increasing the number of graduate student remissions. ECU shall report to the Board of Governors of The University of North Carolina, the Office of State Budget and Management, and the Fiscal Research Division on the allocation of the funds. The section became effective July 1, 1998. (SK)

UNC Health Care System Governance/Management Flexibility--East Carolina University Medical Faculty Practice Plan Management Flexibility, S.L. 1998-212, Sec. 11.8 (SB 1366, Sec. 11.8) rewrites the provisions in Chapter 116 of the General Statutes governing the University of North Carolina Hospitals, creates two new statutory entities, and makes a number of conforming changes to related statutes.

G.S. 116-37 is repealed, renamed and rewritten. Formerly entitled "University of North Carolina Hospitals at Chapel Hill" (UNCH-CH), the section is renamed "University of North Carolina Health Care System" (UNC-HCS). UNC-HCS is designated an affiliated enterprise of The University of North Carolina. All the rights and obligations of UNCH-CH are transferred to UNC-HCS, and both UNCH-CH and the

clinical patient care programs of the Medical School at UNC-Chapel Hill are to be governed by the board of directors of UNC-HCS (HCS Board). The HCS Board shall consist of six to eight voting ex officio members including the President of The University of North Carolina (President), the chief operating officer of UNC-HCS, two administrative officers from UNC-Chapel Hill (UNC), two members of the UNC-CH School of Medicine faculty, plus the President of UNCH-CH and the Dean of the School of Medicine if they are not otherwise appointed. There also shall be 9 to 21 appointed voting members. The HCS Board shall determine the number of appointed members and shall submit to the President at least twice as many candidates. The President shall select the members from the nominees, and the Board of Governors of The University of North Carolina (BOG) shall ratify that selection. A member of the HCS Board may not be a member of the BOG, a member of a board of trustees of a UNC constituent institution, or a State officer or State employee. Members serve four-year terms, and may not serve more than two consecutive terms. The members of the former UNCH-CH board shall finish their terms as members of the HCS Board. The HCS Board may adopt policies, rules, and regulations regarding UNC-HCS. Decisions by the HCS Board are final, but may be appealed in writing to the BOG. The Board of Trustees of UNC-CH, the Chancellor of UNC-CH, and the HCS Board shall forward to the President at least two candidates for the position of executive and administrative head (CEO) of UNC-HCS. The President shall nominate a candidate for selection by the BOG. The CEO shall have complete authority to formulate proposals, recommendations, and policies for adoption by the HCS Board regarding the programs and activities of UNC-HCS.

A new section, G.S. 116-40.6, is created entitled "East Carolina University Medical Faculty Practice Plan" (ECU-MFPP). ECU-MFPP is designated a division of the School of Medicine at East Carolina University (ECU) with authority to operate the clinical programs and facilities of the medical school, to provide medical care, and to provide training to physicians and other health care professionals. The Board of Trustees of ECU, which may adopt policies and procedures regarding personnel, purchases, and property transactions, governs ECU-MFPP.

In order to achieve greater flexibility, UNC-HCS and ECU-MFPP are exempt from a number of laws governing State agencies. The employees of UNC-HCS and ECU-MFPP are State employees and are subject to the provisions in Chapter 126 of the General Statutes governing political activity, equal employment and compensation opportunities, privacy of employee records, and protection for reporting improper governmental activities. However, the respective governing boards may adopt pay schedules, position classifications, and policies related to employee dismissal, demotion, or discipline. The boards also may determine annual leave, sick leave, and holidays. Policies regarding employees who are faculty members of the respective schools of medicine must be consistent with faculty policies adopted by the BOG. Individuals who have obtained career State employee status on or before October 31, 1998, shall retain that status and are not subject to discipline and discharge policies adopted after that date. UNC-HCS and ECU-MFPP are exempt from the provisions in Chapter 143 of the General Statutes governing State purchase and contract, the disposition of surplus property, and contracts to obtain consultant services. The respective governing boards may each adopt rules to perform the functions of the Department of Administration in

acquiring or disposing of any interest in real property. However, both entities are prohibited from encumbering property. Real property acquisitions do not require prior approval by the Governor and the Council of State under Article 6 of Chapter 146 of the General Statutes. The Attorney General must review acquisitions as to form, and each board must file a report with the Governor and Council of State after acquiring real property. UNC-HCS and ECU-MFPP are exempt from the provisions of Chapter 143 of the General Statutes that relate to Department of Administration review and approval of construction plans and specifications, preliminary studies and cost estimates, and letting contracts for construction of State buildings. The respective governing boards may adopt policies regarding fee negotiations for all design contracts and letting of all construction contracts, for performing the duties of obtaining certificates of compliance, for using open-ended design agreements, and for using standard contracts for design and construction.

The rewritten G.S. 116-37 also contains provisions regarding finances, patient/health care system benefits, reports, and patient information that apply to UNC-HCS only. UNC-HCS is subject to the Executive Budget Act and the CEO is responsible for all aspects of budget preparation, budget execution, and expenditure reporting. The CEO may expend operating funds, including State funds, for the direct benefit of a patient if the CEO determines the expenditure would result in a financial benefit to UNC-HCS. The expenditures may not exceed $7500 per patient per admission and are subject to certain restrictions. The CEO and the President must report annually to the Joint Legislative Commission on Governmental Operations on the operations and financial affairs of UNC-HCS. UNC-HCS must request, verbally and in writing, that each patient disclose his or her social security number. If the patient does not disclose the social security number, UNC-HCS shall deny the patient the benefits and privileges of UNC-HCS to the maximum extent permitted by federal law and regulations.

G.S. 96-8(6)k., regarding eligibility for unemployment insurance, is amended to exempt from the definition of "employment" service performed as a resident by an individual who has completed a four-year course in medical school, provided that the service is performed for and while in the employment of a nonprofit organization created to provide medical services to a targeted socio-economically disadvantaged group within North Carolina.

Section 11.8 became effective November 1, 1998. (KG)

UNC Applications Pool, S.L. 1998-212, Sec. 11.9 (SB 1366, Sec. 11.9) directs the Board of Governors of The University of North Carolina (BOG) to develop a system for sharing among the constituent institutions certain applications from North Carolina residents. The BOG may collaborate with the State Board of Community Colleges and the private colleges and universities in developing the system. The BOG shall report to the Joint Legislative Oversight Committee no later than January 15, 1999, on its progress in developing the system. The section became effective July 1, 1998. (SK)

Align UNC Professional Development Programs, S.L. 1998-212, Sec. 11.12 (SB 1366, Sec. 11.12) amends G.S. 116-11, effective July 1, 1998, to direct the Board of Governors of The University of North Carolina (BOG) to create a board of directors for the UNC

Center for School Leadership Development and to decide the board's powers and duties. Effective January 1, 1999, the Model Teacher Consortium is transferred to the BOG from the Department of Public Instruction. The program shall be coordinated within the UNC Center for School Leadership Development. See also Studies, Referrals to Departments, Agencies, Etc. (SK)

Increase The Number of School Administrator Programs that may be Established by UNC Board of Governors, S.L. 1998-212, Sec. 11.13 (SB 1366, Sec. 11.13) amends G.S. 116-74.21(b) to increase from eight to nine the number of school administrator programs. The Master of School Administration program at North Carolina State University (NCSU) shall be one of the nine programs established. NCSU shall cooperate with North Carolina Central University and The University of North Carolina at Chapel Hill through the use of distance education and sharing of faculty expertise. The section became effective July 1, 1998. (SK)

Studies

Referrals to Existing Committees

Study DWI Forfeiture Provisions, S.L. 1998-182, Sec. 37 (SB 1336, Sec. 37) directs the Joint Legislative Education Oversight Committee to study the effect of the forfeiture provisions under the act and their financial impact on county boards of education. The Committee is to recommend ways to improve the effectiveness and efficiency of the procedure. The Committee may report to the 1999 General Assembly. (RJ)

Community College Tuition Study, S.L. 1998-212, Sec. 10.9 (SB 1366, Sec. 10.9) directs the Joint Legislative Education Oversight Committee to study community college tuition in light of recent proposals intended to maximize the opportunities of North Carolina residents to continue their education after high school, and federal "Hope Scholarships". The Committee shall report the results of its study to the Appropriations Subcommittees on Education of the Senate and the House by January 15, 1999. (SI)

Study Special Education Obligations of Department of Correction, S.L. 1998-212, Sec. 17.15 (SB 1366, Sec. 17.15). See **CRIMINAL LAW**.

Referrals to Departments, Agencies, Etc.

American Sign Language, S.L. 1998-131, Sec. 10(c) (HB 1477, Sec. 10(c)) directs the Board of Governors of The University of North Carolina and the State Board of Community Colleges to study methods to assure that faculty who teach American Sign Language are highly qualified and competent. These Boards must report to the Appropriations Subcommittees on Education and Health and Human Services by March 1, 1999, on this study. This provision became effective July 1, 1998. (RJ)

Program Accessibility, S.L. 1998-131, Sec. 11 (HB 1477, Sec. 11) directs the Board of Governors of The University of North Carolina to assess the accessibility of programs for deaf and blind students, and to report to the General Assembly by December 1, 1998. This provision became effective July 1, 1998. (RJ)

Communication Methods for Deaf and Hard of Hearing Children, S.L. 1998-131, Sec. 12 (HB 1477, Sec. 12) directs the Secretary of Health and Human Services to contract for the design of a longitudinal study of deaf and hard of hearing children to assess communication methods used and student performance. This provision became effective July 1, 1998. (RJ)

Certification for Residential School Teachers, S.L. 1998-131, Sec. 14 (HB 1477, Sec. 14) as amended by S.L. 1998-212, Sec. 12.3C(c) (SB 1366, Sec. 12.3C(c)) directs the State Board of Education, in consultation with the Secretary of Health and Human Services, to evaluate the certification requirements for teachers at the Governor Morehead School and the three State Schools for the Deaf in light of the specific educational needs at those schools. The Board must determine what types of certificates these teachers should hold and whether dual certificates are appropriate. The Board must revise its policies, rules, and regulations if appropriate and must report to the Senate Appropriations Subcommittees on Education and Health and Human Resources and the House of Representatives by April 15, 1999. This provision became effective July, 1, 1998. (RJ)

Year-Round Schools Task Force, S.L. 1998-133 (HB 1478) directs the Department of Public Instruction to study and make recommendations regarding the removal of the barriers that prevent local boards of education from providing year-round schools for all grade levels. The task force will report the results of the study to the State Board of Education and the Joint Legislative Education Oversight Committee before May 15, 1999. The State Board must disseminate results to local boards no later than June 15, 1999. The section became effective September 11, 1998. (SK)

Principal Salary Studies, S.L. 1998-212, Sec. 9.7 (SB 1366, Sec. 9.7) authorizes the State Board of Education to study principals' salaries. The Board must report the results of this study to the Joint Legislative Education Oversight Committee by January 1, 1999. This section became effective July 1, 1998. (RJ)

Testing, S.L. 1998-212, Sec. 9.15(b) (SB 1366, Sec. 9.15(b)) directs the State Board of Education to study standardized testing. See Public Schools above. (RJ)

LEP Teachers, S.L. 1998-212, Sec. 9.20(c) and 9.20(e) (SB 1366, Sec. 9.20(c) and 9.20(e)) direct the Board of Governors of The University of North Carolina to examine the provision of English as a Second Language (ESL) certification programs through distance learning methods and off-campus programs, and direct the State Board of Education to survey local school units to evaluate their ability to recruit and retain ESL certified teachers. The State Board must report the survey results by December 15, 1999,

to the Joint Legislative Education Oversight Committee. This section became effective July 1, 1998. (RJ)

Supplanting of Small School System Supplemental Funding, S.L. 1998-212, Sec. 9.27(d) (SB 1366, Sec. 9.27(d)) directs the State Board of Education to analyze whether counties have used small school supplemental funds to supplant local current expense funds. The Board is to report to the Joint Legislative Education Oversight Committee by May 1, 1999, on its analysis. Section 9.27 became effective July 1, 1998. (RJ)

Community College Independent Study of Capital Budget, S.L. 1998-212, Sec. 10.1 (SB 1366, Sec. 10.1) directs the State Board of Community Colleges (Board) to contract with an outside consultant to review the community college capital allocation process and recommend modifications to make the process more equitable. The consultant also will study performance budget measures and recommend options for allocating community college funds on a performance budgeting basis. The State Board must report to the Joint Legislative Appropriations Subcommittees on Education and the Fiscal Research Division by February 1, 1999. This section became effective July 1, 1998. (SI)

Annual Review Accountability Enhanced, S.L. 1998-212, Sec. 10.5 (SB 1366, Sec. 10.5) directs the State Board of Community Colleges (Board) to review the current program review standards to ensure a higher degree of program accountability so that programs meet the needs of students, employers, and the general public. The Board must establish appropriate levels of performance for each measure based on sound methodological practices, and make an interim report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division by November 1, 1998, and a final report by February 1, 1999. This section became effective July 1, 1998. (SI)

Development of Management Information System, S.L. 1998-212, Sec. 10.6 (SB 1366, Sec. 10.6) directs the State Board of Community Colleges (Board) to develop a plan for an efficient and effective technology and management information system. The plan shall identify the technology and management information needs of the local colleges and the Department of Community Colleges, the cost of meeting these needs, and the benefits of meeting them. The Board will report to the Joint Legislative Education Oversight Committee by February 1, 1999. This section became effective July 1, 1998. (SI)

Cooperative High School Education Program Accountability, S.L. 1998-212, Sec. 10.7 (SB 1366, Sec. 10.7) directs the State Board of Community Colleges and the State Board of Education to create a joint task force to study the existing policies for cooperative high school education programs and to recommend changes necessary to improve the programs' success and accountability. The goal of the General Assembly is to increase the number of qualified high school students participating in cooperative high school education programs provided by local community colleges through programs that do not duplicate high school Advanced Placement courses and that minimize overlapping costs to the State for public schools and community colleges. The Boards must report their findings and recommendations to the Joint Legislative Education Oversight

Committee and the Fiscal Research Division by March 1, 1999. This section became effective July 1, 1998. (SI)

Hospitality and Tourism Job Training Programs, S.L. 1998-212, Sec. 10.10 (SB 1366, Sec. 10.10) directs the State Board of Community Colleges to study hospitality and tourism job training programs offered in North Carolina community colleges. The State Board must collaborate with the Board of Governors of The University of North Carolina, the State Board of Education, and the Department of Commerce to improve articulation between institutions with regard to hospitality and tourism job training programs, and shall report jointly to the Joint Legislative Education Oversight Committee by April 1, 1999. This section became effective July 1, 1998. (SI)

Community College to Serve Anson and Union Counties, S.L. 1998-212, Sec. 10.13 (SB 1366, Sec. 10.13) directs the Union County Commissioners and the Anson County Commissioners to develop and submit to the State Board of Community Colleges (State Board) by February 1, 1999, one of the following proposals: (i) a contract for establishment of a new multicampus community college to serve the two counties, (ii) a proposal for separate community colleges to serve the two counties, or (iii) another proposal for providing access to community college courses to the citizens of Union and Anson Counties.

If the two boards of county commissioners fail to submit a joint proposal, the State Board must, by February 28, 1999, and after consultation with the Joint Legislative Education Oversight Committee, use funds within the Department's budget to employ an independent consultant to study the issue. The State Board will report its recommendations, based on the consultant's report, to the Appropriations Committees of the Senate and the House prior to May 1, 1999. This section became effective July 1, 1998. (SI)

UNC Equity Funds/Capital Facilities Study, S.L. 1998-212, Sec. 11.4 (SB 1366, Sec. 11.4) amends the study of the equity and adequacy of the physical facilities of the constituent institutions. The Board of Governors of The University of North Carolina (BOG) shall contract with a private consulting firm to conduct an assessment of capital funding needs for each campus. The needs assessment shall include a capital spending plan for the next 10 years to aid the General Assembly in making funding decisions. The BOG and the consultant shall make interim progress reports to the General Assembly on a periodic basis. The BOG shall report the results of its study and plan to the General Assembly by April 15, 1999. The section became effective July 1, 1998. (SK)

UNC Distance Education, S.L. 1998-212, Sec. 11.7 (SB 1366, Sec. 11.7) directs the Board of Governors of The University of North Carolina (BOG) to track the funds used for providing off-campus courses in order to determine the cost of providing the programs. The BOG shall conduct an evaluation including a comparison of the costs and quality of on-campus delivery of similar programs and the impact on access to higher education. The BOG shall make a preliminary report to the General Assembly by May 1, 2000. Subsequent evaluations, including recommendations for changes, shall be made to

the Joint Legislative Education Oversight Committee at least biennially. The section became effective July 1, 1998. (SK)

Align UNC Professional Development Programs, S.L. 1998-212, Sec. 11.12 (SB 1366, Sec. 11.12) directs the Board of Governors of The University of North Carolina (BOG) to study and recommend any statutory or organizational changes to assure oversight and coordination of the professional development programs in the UNC Center for School Development Leadership. The study shall include whether the existing boards of the individual professional development programs should be made advisory to the Board of Directors of the UNC Center for School Development Leadership. The BOG shall make its report and recommendations to the Joint Legislative Education Oversight Committee by December 15, 1998. The section became effective July 1, 1998. (SK)

Collaborative Efforts to Improve Quality of Academic Programs at Residential Schools/Program Review, S.L. 1998-212, Sec. 12.3C (SB 1366, Sec. 12.3C). See **HUMAN RESOURCES**.

Study Principals' Safe Schools Bonus, S.L. 1998-220, Sec. 17 (SB 1125, Sec. 17) directs the State Board of Education (Board) to evaluate the allocation of the one percent bonus that goes to principals and assistant principals in schools that meet local goals for maintaining safe and orderly schools. The Board must report the results of this evaluation to the Joint Legislative Education Oversight Committee by December 31, 1998. This section became effective July 1, 1998. (RJ)

Proposal for Lateral Entry Teacher Licensure Program, S.L. 1998-220, Sec. 18 (SB 1125, Sec. 18) directs the State Board of Education and the Board of Governors of The University of North Carolina to develop a proposal for a statewide lateral entry teacher licensure program. These Boards must report this proposal to the Joint Legislative Education Oversight Committee by September 1, 1999. The Joint Legislative Education Oversight Committee must review the proposal and report any suggested legislation to the General Assembly by May 1, 2000. This provision became effective November 5, 1998. (RJ)

EMPLOYMENT

[Karen Cochrane-Brown (KCB), Bill Gilkeson (WRG), Theresa Matula (TM)]

Enacted Legislation

State Employees

Local/State Purchase of Service, S.L. 1998-71 (HB 1522) amends provisions in the law governing the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System to allow members of each System to purchase service rendered as a part-time employee in either System. Currently, local government employees can purchase part-time service to a local governmental employer and a teacher or State employee can purchase part-time service to an employer as defined in the State System. However, an employee in either system may not purchase service rendered to an employer in the other system. This act amends the law to add service to employers in the State System to the law relating to the Local System and a similar provision adding service to employers in the Local System to the law governing the State System. This act became effective July 1, 1998. (KCB)

State Employee Sexual Harassment, S.L. 1998-135 (SB 78), as amended by S.L. 1998-217, Sec. 54 (SB 1279, Sec. 54) amends the State Personnel Act to establish jurisdiction for the hearing of State employee workplace harassment grievances before the Office of Administrative Hearings and the State Personnel Commission. This act adds a provision stating that employees having grievances involving unlawful harassment because of age, sex, race, color, national origin, religion, creed, or handicapping condition may submit a written complaint to the agency, which must be responded to by the agency within 60 days. The employee then has the right to appeal directly to the State Personnel Commission for claims based upon harassment in the workplace or retaliation for opposition to harassment in the workplace. Harassment in the workplace includes harassment based on the creation of a hostile work environment or upon quid pro quo. This act also authorizes a State employee to commence a contested case alleging unlawful harassment under the Administrative Procedure Act, to be heard by the Office of Administrative Hearings. This act became effective August 15, 1998, and applies to State employee grievances arising on or after that date and to cases pending on that date in the Office of Administrative Hearings or before the State Personnel Commission or on appeal from a decision of the Commission. The act also applies to cases that were voluntarily dismissed without prejudice before the Office of Administrative Hearings before August 15, 1998, and that are refiled prior to December 1, 1998, provided that the case is not otherwise barred from being refiled. (KCB)

Register of Deeds Supplemental Pension Changes, S.L. 1998-147 (SB 1407) amends the Register of Deeds' Supplemental Pension Fund Act to provide benefits to registers of deeds who are otherwise not eligible solely because the county in which they serve does

not participate in the Local Governmental Employees' Retirement System. In order to receive the benefit authorized by this act, the register of deeds must have either: (1) attained the age of 65; (2) attained 30 years of creditable service regardless of age; or (3) attained the age of 60 with not less than 25 years of service. The individual also must have at least 10 years of service as a register of deeds and be ineligible to receive any retirement benefits from any state or locally sponsored plan. The act also provides that the monthly benefit shall be reduced by an amount equal to the benefit that would have been payable, had the register of deeds been a member of the Local System, as it is for all other registers of deeds. This act became effective July 1, 1998. (KCB)

State Personnel Commission Reorganized, S.L. 1998-181 (HB 1469). See **STATE GOVERNMENT**.

Supplemental Insurance Benefits, S.L. 1998-187 (SB 350). See **INSURANCE.**

Credit for Probationary Employment, S.L. 1998-190 (SB 1138) adds a provision to the law governing the Teachers' and State Employees' Retirement System, to allow members of the System to purchase credit for probationary employment with a local government. The member may purchase the service by making a lump sum payment for the full liability of the service credit. Currently, members of the Local System may purchase service for any periods in which the employee was considered to be in a probationary or employer-imposed waiting period status, between the date of employment and the date of membership in the Retirement System, provided the employer has revoked the probationary or waiting period policy. However, if a person transfers from the Local System to the State System, without having purchased the service that person would not be able to purchase the service in the State System. This act remedies this situation. The act became effective July 1, 1998. (KCB)

Military Service Credit, S.L. 1998-214 (HB 1362) amends the laws governing the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System, to allow members of both Systems to include transferred service credit in determining eligibility to purchase military service credit. Under present law, a person who transfers service from one system to the other is not entitled to have that service counted in the determination of eligibility to purchase military service credit. This act amends the military service provision to correct this situation. This act became effective October 31, 1998, and applies to persons retiring on or after that date. (KCB)

Charter Schools, S.L. 1998-212, Sec. 9.14 (SB 1366, Sec. 9.14). See **EDUCATION.**

Dues Deduction for Retirees, S.L. 1998-212, Sec. 9.24 (SB 1366, Sec. 9.24). See **EDUCATION.**

EEOC Deferred Cases to OAH/Repeal Sunset, S.L. 1998-212, Sec. 22 (SB 1366, Sec. 22) removes an expiration date from a 1997 act that designated the Office of Administrative Hearings (OAH) as the "deferral agency" for charges filed by State

employees with the United States Equal Employment Opportunity Commission (EEOC) and deferred by the EEOC. The kind of cases in question are those filed by State employees covered by the State Personnel Act in which the charge alleges something that is a violation of the State Personnel Act. Those charges the EEOC will defer to a State agency designated by the State. The 1997 act (S.L. 1997-725) made OAH the deferral agency, but sunset that designation December 31, 1998. This section removes the sunset, so that OAH will be the deferral agency permanently. This section became effective July 1, 1998. (WRG)

State Employees COLA/Resolved Disciplinary Actions, S.L. 1998-212, Sec. 28.16B (SB 1366, Sec. 28.16B) amends the State Personnel Act to allow those State employees whose personnel file contains two unresolved disciplinary actions to receive the Cost of Living Adjustment (COLA) for 1997 and 1998. Under the law, prior to this amendment, the only employees who would not receive a COLA were those whose performance is rated at the "Unsatisfactory" level, and those whose personnel file includes two active disciplinary actions of any type, a suspension without pay, or demotion. This provision changes the law so that only those with an "Unsatisfactory" rating or a suspension without pay or demotion will be precluded from receiving the COLA in the future. This act became effective July 1, 1998, and applies to any employee involved in the final written stage of a disciplinary procedure on or after January 1, 1997. (KCB)

Salaries of the Administrator and Executive Secretary of the Industrial Commission Set by Statute, S.L. 1998-212, Sec. 28.18 (SB 1366, Sec. 28.18) amends G.S. 97-78 to make the administrator and executive secretary of the Industrial Commission statutory positions and to provide that their salaries shall be as follows:

- Administrator, 90% of the salary of a Commissioner; and
- Executive Secretary, 80% of the salary of a Commissioner.

The act became effective November 1, 1998. (WRG)

Travel Rate for State Employees, S.L. 1998-212, Sec. 28.20 (SB 1366, Sec. 28.20) amends G.S. 138-6(a) to make several changes to the reimbursement rules for travel by State employees.

- The subsistence rate is raised by $10, from $71 to $81, for in-state travel, and from $83 to $93 for out-of-state travel.
- Sales tax, lodging tax, local tax, or service fees will be reimbursed in addition to the daily subsistence amount.
- An employee may exceed the lodging portion ceiling without approval as long as the food and lodging together do not exceed the ceiling.
- Luncheon reimbursement is allowed if the lunch is part of a meeting of a State board or commission to which the employee is providing staff assistance. The current provision only extends to an employee who is a member of the board.
- Convention registration fees are reimbursed, no matter how high. The current limit is $30.

The section applies to travel occurring on or after January 1, 1999. (WRG)

Retired Teachers/Retirement Benefits, S.L. 1998-212, Sec. 28.24 (SB 1366, Sec. 28.24). See **EDUCATION.**

Salary Continuation Benefits for University Campus Law Enforcement Officers, S.L. 1998-212, Sec. 28.25 (SB 1366, Sec. 28.25) amends G.S. 143-166.13(a) to add UNC campus law enforcement officers to the list of those who benefit from a salary continuation plan despite incapacity to perform duties because of a work-related injury or illness. The section applies to incapacities occurring on or after July 1, 1998. (WRG)

Allow Retirees to Change Their Designated Beneficiaries After Retirement Under Certain Circumstances, S.L. 1998-212, Sec. 28.26 (SB 1366, Sec. 28.26) amends G.S. 120-4.6 (Legislative Retirement System), G.S. 128-27 (Local Governments Retirement System), and G.S. 135-5 (Teachers' and State Employees' Retirement System) in the same ways. It provides that if a member of one of those systems has designated a spouse as a beneficiary but the spouse dies and the member remarries, the member may redesignate the new spouse as a beneficiary within 90 days of the wedding. The section became effective October 30, 1998. It provides that if any person who is retired on October 30, 1998, had earlier designated a spouse as beneficiary but that spouse died and the retiree has remarried, then that retiree may designate the new spouse as beneficiary even though it is more than 90 days since the wedding. In those special cases, the retiree may designate the new spouse for up to 90 days after October 30, 1998. (WRG)

Increase Retiree Death Benefits, S.L. 1998-212, Sec. 28.27 (SB 1366, Sec. 28.27) amends the law governing the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, and the Local Governmental Employees' Retirement System to increase the contributory death benefit for retirees. Currently, retirees from each of these systems may elect to make contributions, in an amount determined by the Board of Trustees, to a group death benefit trust fund. The benefit payable at the retiree's death is a lump-sum payment of $5,000, provided the retiree has made the required contributions for 24 months prior to death. This provision increases the lump-sum death benefit to $6,000, under the same conditions as currently exist. This provision becomes effective January 1, 1999. (KCB)

Reduction in Force Abuses Prohibited, S.L. 1998-212, Sec. 28.28 (SB 1366, Sec. 28.28) amends G.S. 143-27.2 to place limitations on the amount of severance pay given to State employees who are terminated because of a reduction in force (RIF). It provides that the salary used to determine the severance pay will be the employee's final annual salary, but if the employee got a promotion during the final year, the annual salary used in the severance calculation will be the pre-promotion salary. The pre-promotion salary, if used, should be adjusted to account for legislative salary increases. Overtime pay, shift pay, holiday premium, and longevity pay are excluded from the calculation. The section establishes a 12-month waiting period before a RIFed State employee may contract with a State agency other than a UNC campus or a community college. The section became effective October 30, 1998. (WRG)

Repeal of Prohibition on Union Membership by Public Employees, S.L. 1998-217, Sec. 26 (SB 1279, Sec. 26) repeals G.S. 95-97, which prohibited public employees at the State and local level from joining labor unions. The provision had been held unconstitutional in 1969. This section became effective October 29, 1998. (WRG)

ENVIRONMENT AND NATURAL RESOURCES

[George Givens (GG), Hannah Holm (HH), Jeff Hudson (JH), Barbara Riley (BR), Richard Zechini (RZ)]

Enacted Legislation

Fisheries

Extend Core Sound Moratorium, S.L. 1998-56 (HB 1410) extends the moratorium on issuing new shellfish cultivation leases for a portion of Core Sound to July 1, 1999. The act became effective July 24, 1998. (JH)

Marine Fisheries Appeals Panel/Rotate Meeting Locations, S.L. 1998-212, Sec. 14.2 (SB 1366, Sec. 14.2) requires the Marine Fisheries License Appeals Panel to rotate the location of its meetings among the three coastal districts of the State. Beginning November 1998, the meeting location will rotate in the following order: Northeastern District, Central District, Southern District, Central District, Northeastern District, etc. Upon the written request of an applicant, the Panel will schedule a license hearing in the applicant's home district. This section of S.L. 1998-212 became effective July 1, 1998. (JH)

Fishery Management Plans/Regional Advisory Committee, S.L. 1998-212, Sec. 14.3 (SB 1366, Sec. 14.3) directs the Department of Environment and Natural Resources and the Marine Fisheries Commission to consult with and review comments by the regional advisory committees regarding the development of Fishery Management Plans, management measures to implement the plans, and temporary management measures. This section of S.L. 1998-212 became effective July 1, 1998. (JH)

Marine Fisheries Amendments, S.L. 1998-225 (HB 1448) makes a number of modifications to the marine fisheries statutes, provides that the public may continue to exercise customary access rights to the dry-sand area of North Carolina's ocean beaches, and directs the Joint Legislative Commission on Seafood and Aquaculture to study the environmental and socioeconomic impacts of using trawl nets in inland waters. Parts I-IV address the Marine Fisheries Commission's authority and quorum requirements, factors to be considered in the development of fishery management plans, marine fisheries law enforcement, and transitional provisions for fishing licenses. Part V contains the provisions on dry-sand beach access and the trawl net study.

PART I Marine Fisheries Commission

Regulate Participation: S.L. 1998-225 authorizes the Marine Fisheries Commission (Commission) to regulate participation in a fishery if a federal fishery management plan has placed a quota on the State for the harvest of fish in that fishery. If the Commission regulates a fishery pursuant to this authority, the Division of Marine Fisheries (Division) may issue a license to participate in the fishery to a person whom:

- held a license to harvest, land, or sell fish during at least two of the three license years preceding the control date established by the Commission; and
- participated in the fishery during two of those license years by landing in the State at least the minimum number of pounds of fish established by the Commission.

This provision becomes effective July 1, 1999.

Temporary Rule Authority: S.L. 1998-225 authorizes the Commission to adopt temporary rules needed to remain in compliance with changes in federal fishery management plans. This provision became effective November 5, 1998.

Quorum: S.L. 1998-225 increases the quorum for the Commission from 5 to 6. This section also prohibits the Commission from transacting business unless a "commercial" member, other than the Chair, and a "recreational" member, other than the Chair, are present. If the Commission is unable to transact business because a "commercial" member or a "recreational" member is not present, the Chair of the Commission will call another meeting of the Commission within 30 days and will place on the agenda for that meeting every matter for which the Commission was unable to transact business. For any meeting rescheduled under this new quorum provision, 5 members will constitute a quorum and the presence of a "commercial" member and "recreational" member will not be required. This provision became effective November 5, 1998.

PART II Fishery Management Plans

S.L. 1998-225 directs the Department of Environment and Natural Resources (DENR) and the Commission to consult with and review comments by the regional advisory committees regarding the development of Fishery Management Plans, management measures to implement the plans, and temporary management measures. S.L. 1998-225 also specifically authorizes the Commission to include in a fishery management plan a recommendation that the General Assembly limit participation in a fishery. The Commission may make this type of recommendation only if it determines that optimal yield cannot otherwise be achieved and must consider:

- current participation in and dependence on the fishery;
- past fishing practices in the fishery;
- economics of the fishery;
- capability of vessels to be used in another fishery;
- cultural and social factors relevant to the fishery and affected communities;
- capacity of the fishery to support biological parameters;
- equitable resolution of competing social and economic interests; and
- other relevant considerations.

This provision became effective November 5, 1998.

PART III Marine Fisheries Law Enforcement

S.L. 1998-225 amends the marine fisheries law enforcement statutes to:

- increase the penalty for the unauthorized taking of shellfish from a privately held shellfish bottom from a Class 2 misdemeanor to a Class A1 misdemeanor. This provision became effective December 1, 1998 and applies to offenses committed on or after that date;
- amend the "act of God" defense to proclamation violations so that, effective

November 5, 1998, it is a defense to an enforcement action when a person is prevented from receiving notice of the proclamation due to a natural disaster or other act of God; and

- make it unlawful under the fisheries statutes to steal buoys, markers, stakes, nets, pots, and other related devices and increase the penalty for robbing from, stealing, or injuring these devices. This provision became effective December 1, 1998, and applies to offenses committed on or after that date.

PART IV Fishing Licenses; Transitional Provisions

Technical Changes and Definitions: S.L. 1998-225 removes the income requirement from the definition of "commercial fishing vessel" (effective July 1, 1999) and deletes the prohibition against selling fish using another person's endorsement to sell (effective retroactively to August 14, 1997).

The act also amends the definition of "commercial fishing operation" to delete from the definition "taking people fishing for hire" and to exclude from the definition taking fish in a recreational fishing tournament with recreational gear and taking fish under a Recreational Commercial Gear License (RCGL). In addition, the act defines "immediate family" for purposes of transferring a Standard Commercial Fishing License (SCFL) or Retired Standard Commercial Fishing License (RSCFL) and amends the definition of "North Carolina resident" found in the commercial fishing license statutes. This provision becomes effective July 1, 1999.

General Licensing Provisions: S.L. 1998-225 amends and expands the general licensing provisions statute to:

- require that a person fishing pursuant to an assigned SCFL must have the SCFL and the assignment available for inspection;
- require a licensee to apply for a replacement license within 30 days of a change in the licensee's name or address and authorize the Commission to establish replacement license fees of up to $10.00 in order to compensate the Division for the administrative costs associated with issuing replacement licenses;
- provide that eligibility to renew a SCFL extends until one year after the date the SCFL expires;
- prohibit a person from obtaining or renewing a license if, at the time of application, any other license held by the person has been suspended or revoked;
- prohibit a person from obtaining a license if, within the three years prior to application, the person has been determined to be responsible for four or more violations of State laws governing the management of marine and estuarine resources;
- require a person applying for a license to certify that the person has not been determined to be responsible for four or more violations of State laws governing the management of marine and estuarine resources;
- authorize the Division to consider violations of federal law governing the management of marine and estuarine resources in determining whether an applicant is eligible for a license; and
- authorize the Division to cancel a license that has been issued based on false information supplied by the applicant.

This provision becomes effective July 1, 1999.

Standard Commercial Fishing License (SCFL): S.L. 1998-225 amends the SCFL statute to:

- clarify that in order to take shellfish, a person must hold either a SCFL with a shellfish endorsement or a shellfish license;
- clarify that the SCFL authorizes the use of only one vessel at a time, unless the Commission adopts rules to exempt from this requirement unlicensed auxiliary vessels engaged in particular fisheries;
- base the residency requirement for all persons, except military personnel, applying for a SCFL on the filing of a tax return as a North Carolina resident;
- exempt assignments lasting five days or less from filing requirements;
- provide that an assignee cannot further assign a SCFL;
- clarify that a SCFL may only be transferred by the Division;
- clarify the process by which a SCFL may be transferred through an estate; and
- provide that SCFL assignment terminates (in addition to termination by the assignor) in the following circumstances:
  - the estate of the assignor notifies the assignee and the Division of termination;
  - the assignee becomes ineligible to hold a license;
  - upon the death of the assignee;
  - upon suspension or revocation of the SCFL; and
  - at the end of the license year.

This provision becomes effective July 1, 1999.

Retired Standard Commercial Fishing License (RSCFL): S.L. 1998-225 clarifies that all licensing provisions applicable to the SCFL are also applicable to the RSCFL, except that a RSCFL may not be assigned. This provision becomes effective July 1, 1999.

Sale of Fish: S.L. 1998-225 clarifies that a person must have the specific license to sell the type of fish the person is offering for sale. The act also clarifies that the sale of fish by a recreational fishing tournament must be to a licensed fish dealer; gross proceeds from the sale must be used for charitable, religious, educational, civic, or conservation purposes only; and gross proceeds from the sale must not be used to pay tournament expenses. This provision becomes effective July 1, 1999.

Endorsements: S.L. 1998-225 deletes the vessel endorsement provision. These provisions are replaced by new commercial fishing vessel registration requirements. S.L. 1998-225 also clarifies that a menhaden endorsement of a SCFL is only required to take, land, or sell menhaden taken by a purse seine and provides that a shellfish endorsement of a SCFL authorizes the harvest and sale of shellfish. This provision becomes effective July 1, 1999.

Vessel Registration: S.L. 1998-225 requires vessels engaged in commercial fishing operations, except for non-motorized auxiliary vessels, to be registered by the Division. This requirement replaces the vessel endorsement provisions deleted by this act. This provision becomes effective July 1, 1999, and expires September 1, 2003.

Nonresident Menhaden License: S.L. 1998-225 clarifies the eligibility requirements for obtaining a menhaden license for nonresidents not eligible for a SCFL. Crew members of a vessel engaged in a commercial fishing operation harvesting and

selling menhaden are not required to hold a menhaden nonresident license or a SCFL when working under the direction of a person who holds a menhaden license. This provision becomes effective July 1, 1999.

Shellfish License: S.L. 1998-225 provides that a shellfish license is required for taking shellfish from privately held grounds and clarifies the personal use exemption to the shellfish license requirements. This provision becomes effective July 1, 1999.

Fish Dealer License: S.L. 1998-225 provides that failure to comply with the requirement that a fish dealer apply for a replacement license within 30 days after changing the name or address of the fish dealer operation will result in a revocation of the fish dealer license. The act also clarifies that for a fish dealer to lawfully buy fish, the seller must present the license required to sell the type of fish being sold and the registration for the vessel used to catch the fish. This provision becomes effective July 1, 1999.

Pier License: S.L. 1998-225 provides that the replacement license provision in the general licensing statute applies to pier licenses. This provision becomes effective July 1, 1999.

Recreational Commercial Gear License: S.L. 1998-225 provides that it is unlawful for a person fishing under a RCGL to possess fish in excess of recreational possession limits. The act also adds an exemption to the RCGL statute allowing a person to take shellfish by nonmechanical means up to the personal use limits without holding a RCGL. This provision becomes effective July 1, 1999.

Mid-Atlantic Fishery Management Council: S.L. 1998-225 provides for North Carolina membership in the Mid-Atlantic Fishery Management Council. This provision is parallel to the membership provision previously in place for North Carolina membership in the South Atlantic Fishery Management Council. This provision became effective November 5, 1998.

SCFL Availability: S.L. 1998-225 clarifies that the number of SCFLs available in each license year, beginning with the 2000-2001 license year, is the number of the temporary cap (number of endorsements to sell held June 30, 1999, plus a one time addition of 500 SCFLs) less the sum of SCFLs issued and renewed during the previous license year. A person who holds a non-vessel endorsement to sell, other than an endorsement for an aquaculture operation or fishing tournament, on June 30, 1999, is eligible to obtain a SCFL.

S.L. 1998-225 also modifies the eligibility review process for the 500 additional SCFLs. The SCFL Eligibility Board (Board) is established to apply, in place of the Division, the eligibility criteria established by the Commission. The Board is composed of the following members:

- the Secretary of Environment and Natural Resources or the Secretary's designee;
- the Fisheries Director or the Director's designee; and
- the Chair of the Commission or the Chair's designee.

Decisions by the Board are exempt from administrative review, but are subject to judicial review. This provision becomes effective July 1, 1999.

PART V Miscellaneous Provisions

Dry Sand Beach Access: S.L. 1998-225 provides that the seaward boundary of coastal lands established by G.S. 77-20 shall not be construed to impair the customary public use of the ocean beaches. Ocean beaches means the area adjacent to the ocean and ocean inlets that is subject to public trust rights. The landward extent of the ocean beaches is determined by the common law as interpreted by the courts of this State. Natural indicators of the landward extent of the ocean beaches include the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. This provision became effective November 5, 1998.

Trawl Net Study: S.L. 1998-225 directs the Joint Legislative Commission on Seafood and Aquaculture and its Advisory Committee to study the biological, habitat, and socioeconomic impacts of the use of trawl nets in the sounds, estuaries, and rivers of the State. This provision became effective November 5, 1998.

Temporary Rule Authority: S.L. 1998-225 authorizes every agency to which this act applies to adopt temporary rules until all rules necessary to implement this act have been adopted as temporary or permanent rules. This provision became effective November 5, 1998. (JH, GG)

Coastal Development

Extend Submerged Lands Claims, S.L. 1998-179 (HB 1490) extends the date by which a submerged lands claim must be instituted from December 31, 2001, to December 31, 2006, and extends the date by which the Secretary of Environment and Natural Resources must establish a plan to resolve submerged lands claims from December 31, 1998, to December 31, 2003. S.L. 1998-179 also extends the date from December 31, 1998, to December 31, 2003, by which marshland claimed under the submerged lands claims statutes must be donated in order to qualify for a tax credit under G.S. 105-151.12 (credit for certain real property donations). This act became effective October 8, 1998. (JH)

Relocation of Mason's Inlet, S.L. 1998-212, Sec. 14.9D (SB 1366, Sec. 14.9D) authorizes the County of New Hanover to relocate the channel of Mason's Inlet to an alignment that reduces the erosion threat to the north end of the Town of Wrightsville Beach and does not create a threat to houses located on the south end of Figure Eight Island. Materials dredged during the realignment of the channel that are suitable for beach nourishment shall be placed on the adjacent shorelines of the Town of Wrightsville Beach and Figure Eight Island that are threatened by erosion. The County shall not undertake the project without the concurrence of the Division of Water Resources of the Department of Environment and Natural Resources that the project is necessary and viable. Upon obtaining the concurrence of the Division of Water Resources, the County may acquire the property necessary to realign the channel by purchase, negotiation, or condemnation. The County may use the expedited condemnation process used by the State Board of Transportation.

Any documents required by the State Environmental Policy Act shall be reviewed simultaneously with, and within the time limits governing, the permit application required by the Coastal Area Management Act (CAMA). Any CAMA permit issued for

the relocation of the channel pursuant to this provision is exempt from the statutory provision suspending a permit upon the filing of a petition for an administrative appeal of the permit until the Coastal Resources Commission (CRC) either determines that the petitioner cannot commence a contested case or makes a final decision in a contested case.

Construction of the permitted project may not start until the County has obtained all necessary State and federal permits, and no direct State-appropriated funds may be used for the construction of the realignment of the channel. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

NC Seafood Industrial Park Authority Revisions, S.L. 1998-212, Sec. 15.5 (SB 1366, Sec. 15.5) expands the purposes of the North Carolina Seafood Industrial Park Authority (Authority) to include:

- improvement of the waterways connecting the Wanchese Seafood Industrial Park with the Atlantic Ocean, consistent with the jetty system recommended by the United States Army Corps of Engineers in the Shallowbag Bay navigation project; and
- cooperation with the federal government in the maintenance, development, improvement, and use of these waterways.

Section 15.5 also expands the Authority's power of eminent domain to acquire property to construct the jetties recommended by the Shallowbag Bay navigation project and to exercise the expedited eminent domain procedures used by the State Board of Transportation. Finally, Section 15.5 provides that the State is not obligated to match federal funds for construction involved in the stabilization of Oregon Inlet at a ratio greater than 80:20 federal funds to State funds. This section of S.L. 1998-212 became effective July 1, 1998. See also: "Studies" subsection: Oregon Inlet Stabilization Commission, S.L. 1998-212, Sec. 15.5A (SB 1366, Sec. 15.5A). (JH)

Applications for Easements, S.L. 1998-217, Sec. 35 (SB 1279, Sec. 35) extends the date by which the owners of structures such as piers, docks, marinas, and wharves that are located over or upon State-owned lands covered by navigable water may apply to the State Property Office for an easement. The application deadline is extended by three years to October 1, 2001. This section is effective retroactively to October 1, 1998, and applies to applications for easements received by the State Property Office on or after that date. This section became effective July 1, 1998. (JH)

Temporary Rules Governing Coastal Energy Facilities See "Water Quality" subsection: Neuse River Basin Rule/Other Environmental Amendments, S.L. 1998-221, Part II (HB 1402, Part II).

Dry Sand Beach Access See "Fisheries" subsection: Marine Fisheries Amendments, S.L. 1998-225, Part V (HB 1448, Part V).

Water Quality

Improve Sedimentation Control, S.L. 1998-99 (HB 1415) reduces the time allowed for planting ground covers or otherwise restraining erosion from exposed slopes resulting from land disturbing activity from within 30 working days of the completion of any phase of grading to within 15 working days or 30 calendar days of the completion of any phase of grading, whichever is shorter. S.L. 1998-99 also extends the period for which a stop-work order may be issued from a period not to exceed three days to a period not to exceed five days. The act became effective October 1, 1998. (GG, JH, RZ)

Bonds/Critical Infrastructure Needs, S.L. 1998-132 (SB 1354). See **TAXATION**.

Disapprove Tar-Pamlico Basin Rule, S.L. 1998-138 (SB 1373) disapproves amendments made to rule 15A NCAC 2B.0316 (Tar-Pamlico River Basin Rule) that were adopted by the Environmental Management Commission (EMC) and approved by the Rules Review Commission. The amendments would inadvertently reduce the size of the protected area of the Tarboro Water Supply Watershed because of a misunderstanding of the effect of a change in the method of measuring the protected area from linear miles to "river miles" (distance measured along the course of the river). Disapproving the rule leaves the current boundaries of the protected area unchanged.

In order to allow the EMC to implement the other intended amendments to the rule, S.L. 1998-138 provides that the EMC may adopt a temporary rule that incorporates the amendments to the rule that are disapproved by this act, except that the primary classification of the portion of the Tar River designated as Index Number 28-(74) (the section of the Tar River upstream from Tarboro) may not be lowered from WS-IV to WS-V. This act allows the EMC to quickly make the intended changes to rule 15A NCAC 2B.0316 by temporary rule while maintaining the current size of the protected area of the Tarboro Water Supply Watershed. The act became effective September 14, 1998. (RZ, GG)

Expedite Low Risk LUST Cleanup Closures, S.L. 1998-161 (HB 1483) amends the statutes governing North Carolina's Leaking Underground Storage Tank Program in order to expedite the closure of low-risk releases from leaking petroleum underground storage tanks.

Reimbursement for Risk Assessment: S.L. 1998-161 provides that an owner, operator, or landowner may elect to have the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Commercial Fund) or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Noncommercial Fund) pay or reimburse the cost of obtaining the information needed by the Environmental Management Commission (EMC) and the Department of Environment and Natural Resources (DENR) to assess the risk to human health and the environment posed by a discharge or release from a petroleum underground storage tank (UST) under the current risk-based rules without paying certain costs for which the owner, operator, or landowner

would otherwise be responsible. DENR must pay on behalf of or reimburse a cost paid by an owner, operator, or landowner only if:

- the owner, operator, or landowner meets all the requirements for eligibility for payment or reimbursement of costs;
- the discharge or release was reported prior to January 2, 1998;
- the owner, operator, or landowner has complied with the initial site characterization rule (15A NCAC 2N.0704);
- DENR determines that additional work is necessary to classify the risk to human health and the environment posed by the discharge or release; and
- DENR approves the additional work and the cost of the additional work before the owner, operator, or landowner proceeds with the additional work (effective September 28, 1998).

DENR must pay or reimburse claims under this provision in the order in which they are received, and the total of all costs paid or reimbursed under this provision in any calendar month must not exceed twenty percent (20%) of the total of all monies paid to the Commercial Fund from all sources during the previous calendar month. Costs paid or reimbursed from the Commercial or Noncommercial Fund shall not be credited toward other costs for which the owner, operator, or landowner is otherwise responsible. This provision is effective retroactively to January 2, 1998, and expires October 1, 1999.

Connecting Third Parties to Public Water Systems: S.L. 1998-161 provides that the cost of connecting third parties to public water systems is eligible for payment or reimbursement from the Commercial Fund or the Noncommercial Fund if DENR determines that such connection is a cost-effective measure to reduce risk to human health or the environment. This provision shall not be construed to limit any right or remedy available to a third party under any other provision of law, and third parties shall not be required to connect to a public water system. The act further provides that connection to a public water system does not constitute cleanup under any other applicable statute or at common law. This provision is effective retroactively to January 2, 1998.

Protection for Landowners: S.L. 1998-161 retroactively reinstates a provision that grants a current landowner financial protection from most costs associated with discharges or releases from noncommercial USTs. If the owner or operator of a noncommercial UST cannot be identified or located or has failed to clean up a discharge or release and notify DENR, a current landowner who has notified DENR of the discharge or release and has undertaken cleanup may receive payment or reimbursement in the amount of 90% of cleanup costs that exceed $5,000 and 90% of compensation to third parties for bodily injury and property damage in excess of $100,000 per occurrence from the Noncommercial Fund. This provision allows a landowner who has paid these costs to transfer the eligibility for reimbursement under this provision to a subsequent landowner. In addition, this provision limits the sum of payments from the Noncommercial Fund and from all other sources to $1,000,000 per discharge or release. This provision does not require a current landowner to clean up a discharge or release for which the current landowner is not otherwise responsible, nor does it alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner,

owner, or operator under other provisions of law. This provision is effective retroactively to October 1, 1997.

Notification Prior to Reimbursable Work: S.L. 1998-161 provides that the EMC may require an owner, operator, or landowner to obtain approval from DENR before proceeding with any task that will result in a cost that is eligible for payment or reimbursement from the Commercial or Noncommercial Fund. The EMC must adopt rules that specify those tasks that require preapproval, and DENR must deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the petitioner failed to obtain preapproval of the task. DENR is required to pay or reimburse the cost of a task for which preapproval is not required only if the cost is eligible for payment or reimbursement from the Commercial or Noncommercial Fund and DENR determines that the cost is reasonable and necessary. The act directs the EMC to adopt rules governing the reimbursement of necessary and reasonable costs. This provision becomes effective January 1, 1999.

Spill and Overfill Protection: S.L. 1998-161 requires an owner or operator of a commercial UST to comply with spill, overfill, and corrosion protection requirements in order to receive and maintain an operating permit. These additional requirements are mandated by federal law effective December 22, 1998. This provision becomes effective December 22, 1998.

Claims Against the State: S.L. 1998-161 provides that the general prohibition against the assignment of claims against the State does not apply to an assignment of any claim for payment or reimbursement from the Commercial or Noncommercial Fund. This provision is effective retroactively to June 30, 1988.

Releases: S.L. 1998-161 provides that if a spill or overfill from a UST results in a release of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the UST must immediately clean up the release, report the release to DENR within 24 hours, and begin to restore the area affected in accordance with the requirements of the Oil Pollution and Hazardous Substances Control statutes. The act also provides that if a spill or overfill of less than 25 gallons of petroleum does not cause a sheen on nearby surface water, the owner or operator of the UST must immediately clean up the spill or overfill. If a spill or overfill of less than 25 gallons of petroleum cannot be cleaned up within 24 hours or causes a sheen on nearby surface water, the owner or operator of the UST must immediately notify DENR. This provision became effective September 28, 1998.

Lender Liability: S.L. 1998-161 provides that the provisions of 40 Code of Federal Regulations Part 280, Subpart I – Lender Liability (July 1, 1997 edition) apply to Part 2A (Leaking Petroleum Underground Storage Tank Cleanup) and Part 2B (Underground Storage Tank Regulation) of Article 21A of Chapter 143. This provision became effective September 28, 1998.

Noncommercial USTs: S.L. 1998-161 provides that rules adopted by the EMC that are applicable only to commercial USTs shall not apply to:

- farm or residential USTs of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

- USTs of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored; and
- USTs of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households.

This provision became effective September 28, 1998.

Rulemaking Authority: S.L. 1998-161 grants the EMC temporary rulemaking authority to implement the provisions of this act until October 1, 1999. This provision became effective September 28, 1998. (RZ, GG)

Interbasin Transfer Amendments, S.L. 1998-168 (SB 1299) requires the Environmental Management Commission (EMC) to consider the cumulative impact of transfers of surface water between river basins (interbasin transfers) on a source river basin's water quality and quantity before granting a permit for an interbasin transfer. S.L. 1998-168 also reduces the threshold volume of a water withdrawal or interbasin transfer requiring registration and revises water supply planning requirements for local governments, the Department of Environment and Natural Resources (DENR), the EMC, and interbasin transfer certificate holders.

Policy Statement: S.L. 1998-168 amends the public policy statement in the water and air resources statutes to provide that it is the public policy of the State to maintain, protect, and enhance water quality within North Carolina and that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegredation policy set out in 40 Code of Federal Regulations Section 131.12 (July 1, 1997 edition) or the statewide antidegredation policy adopted pursuant to the federal regulations.

Basinwide Planning: S.L. 1998-168 requires the EMC to consider all transfers into and from a river basin that are required to be registered under G.S. 143-215.22H in developing and implementing basinwide water quality management plans.

Registration of Withdrawals and Transfers: S.L. 1998-168 reduces the threshold volume of a withdrawal or transfer requiring registration from 1,000,000 gallons per day to 100,000 gallons per day. The registration requirement does not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities related to agricultural production. This provision becomes effective March 1, 2000.

Regulation of Transfers: S.L. 1998-168 makes various amendments to G.S. 143-215.22I (Regulation of Surface Water Transfers) that:

- direct the EMC, in determining whether to issue a certificate for a transfer, to consider the local water supply plans that affect the source major river basin and to evaluate the projected future municipal water needs in the source major river basin;
- require the EMC to consider the cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the EMC considers the application for a certificate is occurring, is authorized, or is projected in any local water supply plan submitted to DENR;
- require the preparation of an environmental assessment for any petition for a transfer certificate, however, an applicant who petitions the EMC for a certificate under this provision must pay the cost of special studies necessary to comply with the State Environmental Policy Act;

- require that a certificate must include a drought management plan; and
- require that when a transfer for which a certificate was issued equals 80% of the maximum amount authorized in the certificate, the applicant must submit to DENR a detailed plan that specifies how the applicant intends to address future foreseeable water needs. When the transfer equals 90% of the maximum amount authorized in the certificate, the applicant must begin implementing the plan.

Local Water Supply Plans: S.L. 1998-168 repeals statutory language that requires units of local government to prepare local water supply plans only to the extent that technical assistance is available from DENR. The act also adds the requirement that a revised local water supply plan must include the current and anticipated reliance by the local government unit on surface water transfers.

Local and State Water Supply Plans: S.L. 1998-168 requires each unit of local government that provides public water service or that plans to provide public water service to prepare, either individually or together with other units of local government, a local water supply plan and submit it to DENR by January 1, 1999. The act also requires DENR to develop a State water supply plan by January 1, 2000. DENR must identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources, and must review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a ten year period from the date of review.

Effective Dates: All sections of this act became effective October 1, 1998, except for the provision reducing the threshold volume of a water withdrawal or transfer that must be registered, which will become effective March 1, 2000. (RZ, JH, GG)

Swine Growers Register Integrators/Extend Moratoria, S.L. 1998-188 (HB 1480) requires swine growers to register with the Department of Environment and Natural Resources (DENR) any swine operation integrator with which the grower has a contractual relationship to raise swine. S.L. 1998-188 also extends by six months the statewide and Moore County moratorium on the construction or expansion of swine farms. In addition, the act amends the exemptions to the statewide moratorium that allow the Environmental Management Commission (EMC) to permit an animal waste management system that represents either a candidate for research or a proven technological improvement.

Growers Register Integrators: S.L. 1998-188 defines a "grower" as a person who holds a permit for an animal waste management system or whose swine farm is subject to an operations review or inspection. The act defines a "swine farm" as a tract of land devoted to raising 250 or more swine and a "swine operation integrator" as a person other than the grower who provides 250 or more animals to a swine farm and who either has an ownership interest in the animals or otherwise establishes standards for the maintenance, care, and raising of the animals. An ownership interest includes a right or option to purchase the animals. S.L. 1998-188 requires that a grower register any swine operation integrator with which the grower has a contractual relationship to raise swine.

The grower must notify DENR of the termination or new relationship within 30 days if the integrator removes all animals from a swine farm or the grower enters into a

relationship with a different integrator. The act also requires DENR to notify an integrator of all notices of deficiencies and violations of laws and rules governing animal waste management systems at any swine farm for which the integrator has been registered with DENR and makes such a notice a public record within the meaning of the State public records laws.

Statewide Moratorium: S.L. 1998-188 extends the statewide moratorium on the construction or expansion of swine farms, lagoons, and animal waste management systems for swine farms from March 1, 1999, to September 1, 1999. Exemptions from the moratorium are listed below, with notes indicating which exemptions existed under the previous moratorium law and which have been modified. The moratorium does allow:

- construction to repair or replace a component of an existing swine farm or lagoon (*Previous law*);
- construction or expansion to meet the projected population or design capacity or to comply with animal waste management rules (*Previous law*);
- construction or expansion if the person undertaking the construction was issued a permit for that construction prior to August 27, 1997 (*Previous law*);
- construction or expansion if, prior to March 1, 1997, the person undertaking the construction laid a foundation for the component being constructed, entered into a bona fide written contract for construction, or was approved for a line of credit for the construction and obligated or expended funds from the line of credit (*Previous law*);
- construction or expansion of an animal waste management system that does not employ an anaerobic lagoon as the primary method of treatment, does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements set out below, and is designed to be the subject of a research project. The EMC shall issue a permit for the construction or expansion of an animal waste management system under this provision only if it determines after consultation with the Animal and Poultry Waste Management Center of North Carolina State University that additional research is necessary to evaluate whether the animal waste treatment system will:
  - eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff;
  - Substantially eliminate atmospheric emissions of ammonia;
  - Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located;
  - Substantially eliminate the release of disease transmitting vectors and airborne pathogens; and
  - Substantially eliminate nutrient and heavy metal contamination of soil and groundwater (*replaces previous law*); and
- construction or expansion of an animal waste management system that does not employ an anaerobic lagoon as the primary method of treatment and does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements set out

below. The EMC shall act on all permits so as to prevent violation of water quality standards due to the cumulative impacts of permit decisions and all permits must require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized. The EMC shall issue a permit for the construction or expansion of an animal waste management system under this provision only if the animal waste management system has been in use on a swine farm with climatic conditions and soil characteristics that are similar to those at the proposed swine farm site for at least a year and that sufficient data exist to establish that the animal waste management system will:

- eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff;
- substantially eliminate atmospheric emissions of ammonia;
- substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located;
- substantially eliminate the release of disease transmitting vectors and airborne pathogens; and
- substantially eliminate nutrient and heavy metal contamination of soil and groundwater (*replaces previous law*).

The act also provides that neither the EMC nor DENR is obligated to adopt temporary or permanent rules to implement this section. The EMC and DENR are required to evaluate each application for a an animal waste management system permit under the exemptions to the Statewide moratorium on a case-by-case basis. The resulting permit decisions are subject to administrative and judicial review.

Moore County Moratorium: S.L. 1998-188 extends from March 1, 1999, to September 1, 1999, the moratorium on the construction or expansion of swine farms or lagoons in any county in the State:

- that has a population of less than 75,000;
- in which there is more than $150,000,000 of expenditures on travel and tourism; and
- that is not in the coastal area.

Effective September 1, 1999, animal waste management systems in counties meeting the above criteria may only be permitted under an individual permit. The exemptions under the statewide moratorium do not apply to this moratorium.

Effective Dates: The requirement that swine growers register integrators becomes effective January 1, 1999. All other sections of this act became effective October 16, 1998. (RZ, JH, GG)

Neuse and Tar-Pamlico River Basin Assistance, S.L. 1998-212, Sec. 14.6B (SB 1366, Sec. 14.6B). See "Studies".

Extend Compliance Date for Nitrogen Discharge Limit for Certain NSW Waters, S.L. 1998-212, Sec. 14.9H (SB 1366, Sec. 14.9H). In 1997, the General Assembly enacted maximum mass load limits on the discharge of nutrients (nitrogen and phosphorous) into surface waters classified as nutrient sensitive (NSW) by the

Environmental Management Commission (EMC). The 1997 legislation directed the EMC to develop a schedule to phase in these limits over five years for discharges into existing nutrient sensitive waters. The 1997 legislation also authorized the EMC to establish alternate limits if an approved calibrated nutrient response model substantiated those limits. The 1997 legislation did not, however, provide for a phase in of the limits on discharges into waters classified as NSW after July 1, 1997, nor did the 1997 legislation provide for alternative limits based on a calibrated nutrient response model that had not been developed at the time the 1997 legislation became effective.

To address these omissions, S.L. 1998-212, Sec. 14.9H authorizes the EMC to extend the nutrient discharge limit compliance date for permitted facilities that discharge into nutrient sensitive waters where nitrogen is not the nutrient of concern under certain circumstances. This provision also directs the EMC, for waters classified as NSW after July 1, 1997, to establish a nutrient discharge limit compliance date for permitted facilities that discharge or are authorized to discharge into surface waters at the time those waters are classified NSW.

Conditions for Extension: The EMC may extend a nutrient discharge limit compliance date only if it finds that the extension will not result in a violation of the federal prohibition against degrading water quality and that the permit holder for the discharging facility needs time to develop a calibrated nutrient response model. The EMC will determine the length of the extension by adding to the date on which the extension is granted:

- two years for data collection for the model;
- a maximum of one year for preparation of the model;
- the amount of time necessary for the EMC to develop and implement a nutrient management strategy or to modify discharge permits; and
- a maximum of five years (three years with the possibility of an additional two year extension) to design and construct a facility that will comply with applicable nutrient limits.

Extension Requirements: S.L. 1998-212, Sec. 14.9H authorizes the EMC to adopt temporary rules to implement the compliance date extension provisions. A permit holder for a facility who is granted an extension must:

- develop a calibrated nutrient response model that has been approved by the EMC;
- optimize the operation of all facilities operated by the permit holder that discharge into the nutrient sensitive waters in question;
- evaluate methods to reduce the amount of waste discharged into the nutrient sensitive waters in question;
- evaluate methods to reduce the amount of treated effluent discharged into the nutrient sensitive waters in question; and
- report to the EMC on progress in complying with these requirements.

Revoking Extensions: The EMC may revoke an extension if it determines that the permit holder for a facility has failed to meet the conditions of the extension or has violated any conditions of a discharge permit and the permit violation results in a significant violation of water quality standards.

Reporting Requirements: S.L. 1998-212, Sec. 14.9H requires applicants for a new or modified discharge permit to provide information to the EMC on the amount and cost-effectiveness of public funds used to build new wastewater treatment facilities. This section further directs the EMC to provide a quarterly summary and analysis of this information to the Environmental Review Commission (ERC) beginning April 15, 1999.

S.L. 1998-212, Sec. 14.9H also amends the existing EMC reporting requirement to provide that written reports are due annually on January 15, April 15, July 15, and October 15 regardless of whether the General Assembly is in session.

This section of S.L. 1998-212 became effective July 1, 1998. (JH, GG)

Tar-Pamlico and Neuse Rivers Rapid Response Team, S.L. 1998-212, Sec. 14.10 (SB 1366, Sec. 14.10) requires the Department of Environment and Natural Resources (DENR) to direct members of the "Rapid Response Teams" for the Tar-Pamlico River Basin and the Neuse River Basin to assist other departmental personnel in routine water quality monitoring activities in the Tar-Pamlico River Basin or Neuse River Basin when the members of the "Rapid Response Teams" are not needed to respond to water quality emergencies or citizen complaints. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Upper Neuse River Basin Funds/Model Watershed Management Plan, S.L. 1998-212, Sec. 14.15 (SB 1366, Sec. 14.15). See "Studies".

Clean Water Grants/Clarification, S.L. 1998-212, Sec. 14.19 (SB 1366, Sec. 14.19). See **TAXATION**, under Bonds/Critical Infrastructure Needs.

Water Quality Fees, S.L. 1998-212, Sec. 29A.11 (SB 1366, Sec. 29A.11) implements a new water quality fee structure in response to an anticipated shortfall in funding for the water quality programs administered by the Water Quality Section of the Division of Water Quality in the Department of Environment and Natural Resources (DENR). Funding for these water quality programs has been historically supported by three main sources: federal monies, State General Fund Appropriations, and permit fee receipts. In the past, the Environmental Management Commission (EMC) established some of the fees in rule, while others were set out in the General Statutes. Under the new fee structure, the EMC will no longer establish water quality fees, and the entire new fee structure will be set out in the General Statutes. The new fee structure was recommended to the ERC by a stakeholder working group in order to achieve two main goals: 1) continue funding 30% of the water quality program budget through permit fees, and 2) establish a closer link between the fee charged for a specific permit and the time and effort that DENR must expend to process and enforce the permit. The act sets fees for:

- National Pollutant Discharge Elimination System (NPDES) permits;
- single family residence permits;
- stormwater and wastewater discharge general permits;
- recycle system permits;
- nondischarge permits;

- Consent Special Orders modifying the permits listed above;
- sewer and stormwater system permits;
- water quality certifications;
- permits for the land application of petroleum contaminated soils;
- animal waste management system permits; and
- certification for operators of water pollution control systems and animal waste management systems.

For many of these permits and certifications, an applicant is required to pay a non-refundable application fee equal to the annual fee for the permit or certification. If the permit is issued, the initial application fee will be applied as the annual fee for the first year. If the application is denied, the application fee will not be refunded.

Use Of Fees: S.L. 1998-212 repeals the provision that credits animal waste management system permit fees to the General Fund as nontax revenue and prohibits DENR from using these permit fees to cover the costs of the animal waste management system permit program.

Effective Date: This provision becomes effective January 1, 1999. (JH, GG)

Amend Conservation Easements Tax Credit, S.L. 1998-212, Sec. 29A.13 (SB 1366, Sec. 29A.13). See **TAXATION.**

Neuse River Basin Rule/Other Environmental Amendments, S.L. 1998-221 (HB 1402): Part I of this act directs the Environmental Management Commission (EMC) to revise the Neuse River Basin Rule; Part II authorizes the Coastal Resource Commission (CRC) to adopt rules governing coastal energy facilities; Part III provides guidance on the use of federal Conservation Reserve Enhancement Program funds; and Part IV revises reporting requirements for the EMC and the Department of Environment and Natural Resources (DENR).

PART I Disapprove/Revise Neuse River Basin Rule

Permanent Rule Disapproved, Temporary Rule Extended: S.L. 1998-221 disapproves the Neuse River Basin Rule as a permanent rule, but provides that it will remain in effect as a temporary rule until the revisions to the temporary rule required by this act become effective. This provision also directs the EMC and DENR to implement the temporary Neuse River Basin Rule in accordance with the requirements set forth below.

Implementation of Temporary Rule: S.L. 1998-221 provides that for purposes of implementing the temporary Neuse River Basin Rule, the existence of surface water will be presumed if the surface water appears on either the most recent soil survey maps or United States Geological Survey topographic maps. Any question as to the accuracy of these maps will be determined by the Director of the Division of Water Quality in DENR (Director). The Director's determination will be subject to both administrative and judicial review. In addition, for purposes of the temporary Neuse River Basin Rule, the act defines "forest vegetation" as vegetation consisting of trees and woody perennial plants with associated herbaceous vegetation in conjunction with a defined surface layer consisting of leaves, branches, and other plant material. "Forest vegetation" includes mature and successional forest areas and cutover areas.

Compensatory Mitigation: S.L. 1998-221 directs the EMC to adopt rules or recommend legislation to provide alternatives to Neuse River Basin Rule compliance for persons who demonstrate both that they have attempted to avoid and minimize riparian buffer loss and that there is no practical alternative to this loss. These alternatives will include:

- payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund;
- donation of real property or an interest in real property to DENR, a unit of local government, or a private nonprofit conservation organization if the property is a riparian buffer or potential riparian buffer that provides water quality protection equivalent to or greater than that provided by the lost riparian buffer and the donee agrees to maintain the property as a riparian buffer; and
- establishment, restoration, or enhancement of a riparian buffer not protected by the Neuse River Basin Rule.

Compensatory mitigation is only available for the loss of a riparian buffer along an intermittent stream and must be conducted within the Neuse River Basin. This provision also directs the EMC to establish a compensatory mitigation fee schedule based on the area of a riparian buffer that is destroyed and the cost to provide equivalent or greater water quality protection.

Riparian Buffer Restoration Fund: S.L. 1998-221 establishes the Riparian Buffer Restoration Fund (Fund) as a nonreverting, interest-bearing fund to accept compensatory mitigation fees and monetary contributions. The Division of Water Quality in DENR will administer the Fund, and monies may only be expended from the Fund to restore, acquire, create, enhance, and maintain riparian buffers to offset water quality benefits lost due to the loss of riparian buffers. A compensatory mitigation fee paid into the Fund must be used for a project in the same river basin as the riparian buffer that is lost.

Delegation of Authority: S.L. 1998-221 directs the EMC to adopt rules or recommend legislation to provide for the delegation of the implementation and enforcement of the Neuse River Basin riparian buffer requirements to units of local government that have the power to regulate land use.

Vested Rights: S.L. 1998-221 prohibits the EMC and DENR from applying the temporary Neuse River Basin Rule to development with:

- statutory vested rights established prior to July 22, 1997; and
- common law vested rights established prior to November 5, 1998, if the EMC issued a certification pursuant to its authority to administer the federal Clean Water Act prior to July 22, 1997.

This act also prohibits the EMC from adopting rules that confer or restrict a vested right to undertake or complete development and states that it is the intent of the General Assembly that the vesting provisions of this section apply only to the Neuse River Basin Rule and do not establish a precedent for the application of vesting under local zoning or land-use planning to other environmental programs.

Revise Temporary Rules, Proceed with Permanent Rulemaking: S.L. 1998-221 directs the EMC to revise the temporary Neuse River Basin Rule by:

- establishing a scientifically valid, easily understandable, and cost-effective method for determining the presence of surface waters on a particular parcel of land;

- establishing methods for measuring riparian buffer zones appropriate to the different regions of the Neuse River Basin;
- determining, based on drainage area, those segments of intermittent streams to which the riparian buffer requirements do not apply;
- defining forest vegetation;
- establishing exemptions and uses that will be allowed within a riparian area; and
- establishing criteria to determine whether practical alternatives exist to the loss of the riparian buffer.

The act directs the EMC to proceed with permanent rulemaking once the temporary Neuse River Basin Rule has been revised and provides that the temporary Neuse River Basin Rule will remain in effect until the permanent rule becomes effective.

Study Requirements: S.L. 1998-221 directs the EMC to review:

- implementation of the Neuse River Basin Nutrient Sensitive Waters Management Strategy;
- progress in achieving the 30% nitrogen reduction goal and other milestones related to Neuse River water quality; and
- impact of the implementation of the Neuse River Nutrient Sensitive Waters Management Strategy on the regulated community.

The act directs the EMC to report the results of its review, including any recommendations, to the Environmental Review Commission (ERC) by December 1, 2000, and December 1, 2001.

Stakeholder Committee: S.L. 1998-221 directs the EMC to implement the temporary Neuse River Basin Rule and revise the permanent rule with the assistance of a stakeholder advisory committee composed of 23 appointees and representatives as follows:

1. An at large member to serve as Chair, appointed by the Secretary
2. A member of the Commission, appointed by the Chair of the Commission
3. The Director of the Division of Water Quality
4. Chief, Regulatory Branch, Wilmington District, United States Army Corps of Engineers
5. NC Association of Soil and Water Conservation Districts
6. NC Association of County Commissioners
7. NC League of Municipalities
8. Water Resources Research Institute
9. Upper Neuse River Basin Association
10. Lower Neuse River Basin Association
11. NC Association of Environmental Professionals
12. NC Chapter of the American Planning Association
13. NC Aggregates Association
14. NC Citizens for Business and Industry
15. NC Farm Bureau Federation
16. NC Forestry Association
17. NC Home Builders Association
18. A commercial land developer, appointed by the Secretary
19. Conservation Council of North Carolina
20. NC Environmental Defense Fund
21. Neuse River Foundation
22. NC Chapter of the Sierra Club
23. NC Wildlife Federation

Erosion Control Plans: S.L. 1998-221 requires the Director of the Division of Land Resources and any local government to which implementation of the State erosion control program has been delegated to disapprove an erosion control plan if the plan would result in a violation of EMC rules to protect riparian buffers along surface waters.

Temporary Rulemaking Authority: S.L. 1998-221 authorizes the EMC and the Sedimentation Control Commission to adopt temporary rules to implement Part I of this act until October 1, 1999. The act further states that it is the intent of the General Assembly that both commissions adopt all temporary rules necessary to implement Part I of this act by April 1, 1999.

Donations of Property: S.L. 1998-221 authorizes DENR to accept donations of interests in real property if the property is a riparian buffer or potential riparian buffer that will provide water quality protection.

Buffer Maintenance and Restoration Goal: S.L. 1998-221 directs the EMC to establish a goal for the maintenance and restoration of riparian buffers that is consistent with the 30% nitrogen reduction goal for the Neuse River estuary established by the General Assembly during the 1996 Regular Session.

Reporting Requirements: S.L. 1998-221 requires the EMC and DENR to report to the Environmental Review Commission on progress in implementing Part I of this act by January 15, 1999, and by April 1, 1999. The reports will include any proposed legislation recommended by the EMC or DENR as necessary or desirable to achieve the purposes of Part I of this act, the purposes of the Neuse River Nutrient Sensitive Waters Management Strategy, or to improve water quality in the Neuse River Basin.

Part I of S.L. 1998-221 became effective November 5, 1998.

PART II Temporary Rules Governing Coastal Energy Facilities

S.L. 1998-221 authorizes the Coastal Resources Commission to adopt temporary rules governing coastal energy facilities until July 1, 2005. Part II of S.L. 1998-221 is effective retroactively to September 25, 1998.

PART III Use Of Federal Conservation Reserve Enhancement Program Funds

S.L. 1998-221 provides that for nonpoint source pollution control practices that are eligible for funding from the federal Conservation Reserve Enhancement Program, State funding from the Agricultural Cost Share Program will be limited to 75% of the cost of the conservation practice. The remainder of the cost will be paid from the Conservation Reserve Enhancement Program, other federal or State funds, or the assisted farmer. Part II of S.L. 1998-221 became effective November 5, 1998.

PART IV Revise Reporting Requirements

Water Quality Laws: S.L. 1998-221 requires DENR to submit quarterly reports to the ERC and the Fiscal Research Division on the compliance with and enforcement of water quality laws for facilities that discharge to surface waters.

Persistent Noncompliance: S.L. 1998-221 amends Section 12.5 of S.L. 1997-458 (HB 515, Clean Water/Environmentally Sound Policy Act). Section 12.5, as enacted, required the Utilities Commission, the Local Government Commission, and the EMC to examine issues relating to publicly owned treatment works that persistently fail to comply with federal and State laws for the protection of public health and the environment and to jointly report any findings and recommendations to the 1998 Regular Session of the 1997 General Assembly. This study was not conducted and no report was submitted. S.L.

1998-221 revises Section 12.5 to require DENR to conduct the study and to report its findings and recommendations to the ERC on or before October 1, 1999.

Part IV of S.L. 1998-221 became effective November 5, 1998. (JH, GG)

Environmental Health

Certain Septic Tank Devices Required, S.L. 1998-126 (HB 1462) directs the Environmental Management Commission (EMC) to adopt rules that require each new septic tank designed to treat 3,000 gallons per day or less of sewage to employ an effluent filter to reduce the total suspended solids entering the drainfield and an access device to facilitate service maintenance. The act also establishes standards for the required effluents filters and access devices.

S.L. 1998-126 directs the EMC to adopt temporary rules to implement standards for effluent filters and access devices no later than December 1, 1998. These temporary rules will become effective on January 1, 1999. The effluent filters and access devices required by this act apply only to new septic tanks for which a permit is issued on or after January 1, 1999. This act became effective August 28, 1998. (JH)

Extend Date for Well Contractor Certification, S.L. 1998-129 (SB 1269) extends, from January 1, 1999 to January 1, 2000, the time during which the Well Contractors Certification Commission may adopt temporary rules to implement the North Carolina Well Contractors Certification Act (act). S.L. 1998-129 also delays the effective dates of the act's certification and continuing education requirements to January 1, 2000, and delays the repeal of the current registration requirement until January 1, 2000. S.L. 1998-129 became effective September 4, 1998. (RZ, JH)

Well Setback Distances, S.L. 1998-136 (SB 1171) provides that an institution or facility located in a single-family dwelling served by a water supply well that is closer to a building foundation than the minimum distance specified in Commission for Health Services (CHS) rules may be licensed or approved if the results of water testing meet or exceed standards established by the CHS and there are no other potential health hazards associated with the well. The act requires that well water be sampled and tested for pesticides, nitrates, and bacteria at the time of application for licensure or approval and thereafter at intervals determined by the CHS, but not less than annually. A registered sanitarian or other qualified health official shall collect the samples and may examine the well location to determine potential health hazards. Wells must also comply with all other applicable sanitation requirements established by the CHS. The Department of Environment and Natural Resources is authorized to suspend or revoke a license for a violation of the well setback statute (G.S. 130A-235) or rules adopted by the CHS.

S.L. 1998-136 authorizes the CHS to adopt temporary rules necessary to implement the new approval requirements by December 10, 1998. The act also directs the CHS to adopt, no later than January 1, 1999, a temporary rule that provides specific guidance for waiving the water supply well setback requirements contained in 15A NCAC 18A.1720 for institutions and facilities located in single-family dwellings. In

adopting this rule, the CHS must determine specific criteria under which 15A NCAC 18A.1720 may be waived while still protecting the public health. The CHS is required to report on the implementation of this act to the Joint Legislative Administrative Procedure Oversight Committee no later than October 1, 1998. This act became effective September 11, 1998. (RZ)

Childhood Lead Amendments, S.L. 1998-209 (SB 1274) modifies the childhood lead poisoning prevention requirements.

Prevention Requirements: S.L. 1998-209 deletes provisions that specify the content of rules adopted by the Commission for Health Services (CHS) governing the lead poisoning prevention and control. The act also deletes the provision stating that abatement orders must require elimination of the lead poisoning hazard and that removal of children from a dwelling, school, or child care center shall not constitute abatement if the property continues to be used for a dwelling, school, or child care center. The act deletes from the definition of "abatement" the identification of lead-based paint, the identification or assessment of a lead-based paint hazard, inspection, and risk assessment.

S.L. 1998-209 provides that compliance with the maintenance standard satisfies remediation requirements for confirmed lead poisoning cases identified on or after October 1, 1990, as long as all lead poisoning hazards identified on interior and exterior surfaces are addressed by remediation. Continued compliance for owner-occupied residential housing units may be verified by:

- an annual monitoring inspection;
- documentation that no child less than 6 years of age has resided in or regularly visited the unit within the past year; and
- documentation that no child less than 6 years of age residing in or regularly visiting the unit has an elevated blood lead level.

For all other properties, the Department of Environment and Natural Resources (DENR) shall conduct an annual monitoring inspection to verify continued compliance. For compliance purposes, "maintenance standard" means:

- using safe work practices, repairing and repainting areas of deteriorated paint inside a residential housing unit, and for single-family and duplex residential dwellings built prior to 1950, repairing and repainting areas of deteriorated paint on interior and exterior surfaces;
- cleaning the interior of the unit to remove dust that constitutes a lead poisoning hazard;
- adjusting doors and windows to minimize friction or impact on surfaces;
- subject to the occupant's approval, appropriately cleaning any carpets;
- ensuring that all interior surfaces on which dust might collect are readily cleanable; and
- providing the occupant or occupants with all information required to be provided under federal law related to lead-based paint hazard reduction.

Liability: S.L. 1998-209 modifies the lead exposure liability statute so that any owner of a residential housing unit constructed prior to 1978 will not be deemed liable for injuries sustained by an occupant after the owner first complied with the maintenance

standard, provided that the owner has repeated the maintenance annually for units in which children younger than 6 years of age have resided in or regularly visited within the past year.

Application Fee: S.L. 1998-209 directs DENR to collect an application fee of $10.00 for each certificate of compliance. These fees are to be used to support the lead poisoning in children program and may be used to provide for relocation and medical expenses incurred by children with confirmed lead poisoning.

This act became effective October 30, 1998. (JH)

Create New Classification of Abandoned Wells, S.L. 1998-212, Sec. 14.9B (SB 1366, Sec. 14.9B) amends the North Carolina Well Construction Act to create a new classification of abandoned wells. This new classification exempts from the sealing requirements any water supply well that is removed from service as a potable water supply source to be used for other purposes, including irrigation, commercial use, or industrial use. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Museums and Parks

North Carolina Museum of Forestry, S.L. 1998-212, Sec. 14.1 (SB 1366, Sec. 14.1) directs the Department of Environment and Natural Resources to establish and administer the North Carolina Museum of Forestry in Columbus County as a satellite museum of the North Carolina State Museum of Natural Sciences. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Acquisition Parity for Parks and Recreation Trust Fund, S.L. 1998-212, Sec. 14.7 (SB 1366, Sec. 14.7) amends G.S. 113-44.15(b) (Parks and Recreation Fund) to require the North Carolina Parks and Recreation Authority to consider, to the extent practicable, geographic distribution across the State in allocating funds from the Parks and Recreation Trust Fund. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Recycling

Agency Receipts for Recycling/Family Farms Study, S.L. 1998-223 (HB 1472) amends the General Statutes governing State surplus property to allow State agencies to retain funds generated through the sale of recyclable material. S.L. 1998-223 also creates the Commission on Small Family Farm Preservation. The recycling provision becomes effective January 1, 1999. (HH) See also **AGRICULTURE**.

Studies

Legislative Studies

Extend/Expand Environmental Health Study, S.L. 1998-76 (HB 1433) extends the deadline and expands the scope of the study of the distribution of Division of

Environmental Health programs between the Department of Environment and Natural Resources (DENR) and the Department of Health and Human Services. The Environmental Review Commission (ERC) must report to the 1999 General Assembly on the appropriate roles and financing of local and State agencies regarding wastewater treatment, drinking water supplies, and environmental health programs. The act also adds a study of the organization, function, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs. Until the General Assembly acts on the recommendations from these ERC studies, the on-site wastewater, public drinking water, and environmental health programs will remain as separate programs within the Division of Environmental Health in DENR. The act became effective August 6, 1998. (JH, GG)

Trawl Net Study See "Fisheries" subsection: Marine Fisheries Amendments, S.L. 1998-225, Part V (HB 1448, Part V).

Independent Studies, Boards, Etc. Created, Continued or Changed

Oregon Inlet Stabilization Study Commission, S.L. 1998-212, Sec. 15.5A (SB 1366, Sec. 15.5A) establishes the Oregon Inlet Stabilization Study Commission (Commission). The Commission will have the same co-chairs and membership as the Legislative Research Commission's Oregon Inlet Stabilization Study Committee. The Commission may consider:

- the benefits and costs of stabilizing Oregon Inlet;
- alternatives to the stabilization of Oregon Inlet; and
- funding sources for any stabilization project.

Section 15.5A directs the Commission to submit an interim or final report to the 1999 Session of the General Assembly prior to the adjournment of that session and authorizes the Commission to meet during the 1999 Session of the General Assembly at any time when neither the House nor the Senate are in session. Finally, Section 15.5A provides that the Commission will terminate upon the issuance of its final report. This section of S.L. 1998-212 became effective July 1, 1998. See also: "Coastal Development" subsection: NC Seafood Industrial Park Authority Revisions, S.L. 1998-212, Sec. 15 (SB 1366, Sec. 15). (JH)

Neuse River Basin Rule/Other Environmental Amendments, S.L. 1998-221 (HB 1402) creates the Stakeholder Advisory Committee. See above.

Referrals to Departments, Agencies, Etc.

Well Setback Distances, Report on Implementation of New Approval Requirements See "Environmental Health" subsection: S.L. 1998-136 (SB 1171).

State Water Supply Plan see "Water Quality" subsection: Interbasin Transfer Amendments, S.L. 1998-168 (SB 1299).

Parks and Recreation/Natural Heritage Trust Funds Reporting Requirements, S.L. 1998-212, Sec. 14.6 (SB 1366, Sec. 14.6) amends the North Carolina Parks and Recreation Authority's reporting requirements to require the Authority to report no later than October 1 of each year to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission on all allocations from the Natural Heritage Trust Fund from the prior fiscal year. In addition, the Authority must provide a progress report no later than March 15 of each year to the same recipients on the activities of and the expenditures from the Trust Fund for the current year. Section 14.6 of S.L. 1998-212 also requires the Secretary of Environment and Natural Resources to furnish biannually a list of acquisitions made with funds from the Natural Heritage Trust Fund to each member of the Natural Heritage Trust Fund Board of Trustees, the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Neuse and Tar-Pamlico River Basin Assistance, S.L. 1998-212, Sec. 14.6B (SB 1366, Sec. 14.6B) requires the Department of Environmental and Natural Resources (DENR) to provide progress reports to the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division on the Division of Soil and Water Conservation's initiative to assist local soil and water conservation districts in the Neuse and Tar-Pamlico River Basins in targeting and tracking nutrient reduction efforts of agriculture operations, as well as evaluating the cost-effectiveness of best management practices. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Cullasaja River Study Funds, S.L. 1998-212, Sec. 14.8 (SB 1366, Sec. 14.8) requires the Department of Environment and Natural Resources (DENR) to study the feasibility of including that portion of the Cullasaja River that borders Nantahala National Forest in the North Carolina Natural and Scenic River System and report the results of this study and its recommendations no later than March 15, 1999 to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Environmental Review Commission. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Cost-effectiveness of Public Funds used to Build Wastewater Treatment Facilities. See "Water Quality" subsection: Extend Compliance Date for Nitrogen Discharge Limit for Certain NSW Waters, S.L. 1998-212, Sec. 14.9H (SB 1366, Sec. 14.9H).

Progress Reports/Isotope Study to Identify Sources of Nitrogen in Neuse and Cape Fear River Basins, S.L. 1998-212, Sec. 14.11B (SB 1366, Sec. 14.11B) requires the Primary Investigator or Researcher receiving funding from funds appropriated in S.L.

1998-212 to the Department of Environment and Natural Resources for the 1998-99 fiscal year for the isotope study to identify sources of nitrogen in the waters of the Neuse and Cape Fear River Basins to provide a progress report to the Environmental Review Commission, the Joint Legislative Commission on Government Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1 and July 1 of each year until the study is complete. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Progress Reports/Alternative Animal Waste Technologies Study, S.L. 1998-212, Sec. 14.13 (SB 1366, Sec. 14.13) requires the Primary Investigator or Researcher receiving funding from funds appropriated in S.L. 1998-212 to the Department of Environment and Natural Resources for the 1998-99 fiscal year for the study of alternative animal waste technologies to provide a progress report to the Environmental Review Commission, the Joint Legislative Commission on Government Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1 and July 1 of each year until the project or study is complete. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Progress Reports/Neuse Modeling Project Funds, S.L. 1998-212, Sec. 14.14 (SB 1366, Sec. 14.14) provides that the funds appropriated in SB 1366 to the Department of Environment and Natural Resources for the 1998-99 fiscal year for the Neuse River Modeling and Monitoring Project shall be transferred to the Board of Governors of the University of North Carolina for the Water Resources Research Institute and shall be used to monitor and model the Neuse River and the Neuse estuary under the Modeling and Monitoring (MODMON) Project, to develop a hydrodynamic model of the Neuse watershed, and to link these models in order to provide the data needed to determine the effectiveness of current nutrient management strategies for the Neuse River Basin. The Primary Investigator or Researcher receiving funding for this project shall provide progress reports to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1 and July 1 of each year until the project is complete. Upon completion of the project, the Primary Investigator or Researcher shall provide a final report. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Upper Neuse River Basin Funds/Model Watershed Management Plan, S.L. 1998-212, Sec. 14.15 (SB 1366, Sec. 14.15) provides that the Upper Neuse River Basin Association, Inc., (Association) shall develop a cooperative, comprehensive, and integrated State-local watershed management plan for the Upper Neuse River Basin to serve as a model watershed management approach for river basins and subbasins in North Carolina. The Upper Neuse Watershed Management Plan must include a cooperative State-local coalition water quality protection plan as set out in G.S. 143-214.14(g). DENR and other appropriate State agencies must provide technical assistance, and the Association must seek such assistance, in the development and preparation of the plan. The Association and its member governments shall work with State and federal agencies

and private and nonprofit organizations and individuals to obtain funding support for implementation of the plan.

The Association shall report on its activities and programs to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on or before March 1 of each fiscal year, beginning in 1999, through completion of the final plan. This section of S.L. 1998-212 became effective July 1, 1998. (RZ)

Revised Reporting Requirements for DENR on Water Quality Enforcement and Persistent Noncompliance by Publicly Owned Treatment Works See "Water Quality" subsection: Neuse River Basin Rule/Other Environmental Amendments, S.L. 1998-221, Part IV (HB 1402, Part IV).

Neuse River Basin Study Requirements See "Water Quality" subsection: Neuse River Basin Rule/Other Environmental Amendments, S.L. 1998-221, Part I (HB 1402, Part I).

Neuse River Basin Rule Reporting Requirements See "Water Quality" subsection: Neuse River Basin Rule/Other Environmental Amendments, S.L. 1998-221, Part I (HB 1402, Part I).

HUMAN RESOURCES

[Linda Attarian (LA), Jo McCants (JM), John Young (JY)]

Enacted Legislation

Out-of-Home Respite Care Program, S.L. 1998-97 (SB 1149). In 1986, the General Assembly established the Respite Care Program as one of the in-home services that counties may choose as part of the Community Care Block Grant. S.L. 1998-97 amends G.S. 143B-181(c) to delete the requirement that respite care funds provide no more than the current adult care reimbursement rate for out-of-home placement. As a result of this amendment, the Department of Health and Human Services, Division of Aging (Division) may now set the reimbursement rate so long as those rates are reasonable and the services provided meet the Division's required guidelines. This conforms to the procedure now in effect for other in-home-services programs. The Department of Health and Human Services is required to report on the impact of this change to the North Carolina Study Commission on Aging by October 1, 1999. This act became effective August 14, 1998, and expires July 1, 2000. (JY)

ABC's Plan For DHHS Schools, S.L. 1998-131 (HB 1477). See **EDUCATION**.

Conveyance Surplus Automobiles, S.L. 1998-195 (SB 1202). See **LOCAL GOVERNEMENT**.

Advance Directives Corrections, S.L. 1998-198 (SB 1287), as amended by S.L. 1998-217, Sec. 53 (SB 1279, Sec. 53) makes clarifying changes to the law regarding health care powers of attorney (Article 3 of Chapter 32A), and advance instructions for mental health treatment (Part 2 of Article 3 of Chapter 122C).

An advance instruction for mental health treatment is a written instrument in which an individual (the principal) makes a declaration of instructions, information, and preferences regarding any future mental health treatment that may be prescribed. Prior to the enactment of S.L. 1998-198, the principal could appoint a *mental health* care attorney in fact under the advance instruction to make mental health care decisions for the principal following the directives in the advance instruction. In addition, a *health* care attorney in fact may be appointed under a health care power of attorney for the purpose of allowing an individual to give, withhold, or withdraw consent to medical treatment. Concerns arose about the potential for conflicts between a health care attorney in fact and a *mental* health care attorney in fact following the advance instruction. To address these concerns, the act amends Article 3 of Chapter 32A by providing for the incorporation or combining of an advance instruction into a health care power of attorney. Any attorney in fact appointed under a health care power of attorney may exercise the principal's decisions declared in an advance instruction if the principal executed one. The act makes corresponding amendments to Part 2 of Article 3 of Chapter 122C by repealing the

mental health care attorney in fact provisions. As a result of S.L. 1998-198, a principal may execute an advance instruction with or without incorporating it into a health care power of attorney, but may not appoint a *mental health* care power of attorney.

In addition, the provisions in Part 2 of Article 3 of Chapter 122C authorizing the advance instruction for mental health treatment did not clearly specify the circumstances in which physicians and mental health care providers could reasonably rely on the validity of the advance instruction. S.L. 1998-198 makes numerous clarifying changes regarding the validity, effectiveness and immunity from liability arising out of reliance upon an advance instruction. The legislation repeals the automatic two years expiration providing that the advance instruction will be valid unless revoked irrespective of the date it was executed. The act became effective November 1, 1998. (LA)

Department of Health and Human Services TANF Pilots/Strategies, S.L. 1998-212, Sec. 5(h) (SB 1366, Sec. 5(h)) directs the Department of Health and Human Services (DHHS) to implement pilots and strategies that support recipients of Temporary Assistance to Needy Families (TANF) funds in attaining and maintaining self-sufficiency through job retention, family support services, and pre-TANF and post-TANF follow-up. DHHS must report its progress in developing and implementing the pilots and strategies to the Senate Appropriations Committee on Human Resources and the House Appropriations Subcommittee on Human Resources by April 1, 1999. This section became effective July 1, 1998. (JM)

Department of Health and Human Services Report on Enhanced Employee Assistance Program, S.L. 1998-212, Sec. 5(p) (SB 1366, Sec. 5(p)) provides that a portion of the Temporary Assistance to Needy Families (TANF) block grant allocated to the Department of Health and Human Services (DHHS) be used for the Enhanced Employee Assistance Program to: (1) supply funds to private employers who agree to hire former or current Work First recipients or their spouses at entry level positions and wages; and supply enhanced grant funds to private employers who agree to hire former or current Work First recipients or their spouses at a level higher than entry level positions, paying more than minimum wage, and including fringe benefits. DHHS shall report the use of these funds to the House and Senate Appropriations Committees on Human Resources and to Fiscal Research Division by April 1, 1999. This section became effective July 1, 1998. (JY)

General Assembly Policy/Maximum Flexibility in Work First Program, S.L. 1998-212, Sec. 5(r) (SB 1366, Sec. 5(r)) provides that it is the policy of the General Assembly that the Department of Health and Human Services allow maximum flexibility in the Work First Program while insuring that counties comply with federal and State law and meet the overall goals of Work First, including federal participation rates. The General Assembly strongly encourages counties to allocate the flexible Work First County Block Grant funds for childcare services. This section became effective July 1, 1998. (JY)

Collaborative Effort to Improve Quality of Academic Programs at Residential Schools/Program Review of Disability Services, S.L. 1998-212, Sec. 12.3C (SB 1366,

Sec. 12.3C) requires, over the next five years, that the Department of Health and Human Services (DHHS), the State Board of Education, and the superintendents or their designees of the Burke, Guilford, Wake, and Wilson county boards of education work together to develop and implement strategies for strengthening the relationship between the agencies, the Governor Morehead School and the three residential schools for the deaf. They shall identify the best and most feasible ways to assure responsible management and operation of DHHS preschool programs, including the option of transferring to local education agencies direct responsibility for managing the programs. DHHS shall conduct a comprehensive review of policies, programs, and services managed by the Divisions of Vocational Rehabilitation, Services for the Blind, and Services for the Deaf and Hard of Hearing. A report with recommendations must be submitted to the Joint Legislative Education Oversight Committee, the House Appropriations Subcommittee on Human Resources, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division by April 1, 1999. This section became effective July 1, 1998. (JY)

Rules Governing Transfer of Medicaid Benefits Between Counties, S.L. 1998-212, Sec. 12.6 (SB 1366, Sec. 12.6) establishes guidelines for counties to use in providing Medicaid benefits to recipients who move from one county to another. The provision requires the county from which the recipient has moved to transfer the recipient's records to the county director of social services of the county to which the recipient has moved. The recipient's former county of residence must pay any of the county's portion of the non-federal share of medical payments paid during the last month of the recipient's residency. The recipient's new county of residence is responsible for the county's portion of the non-federal share of any medical payment paid thereafter. This section became effective July 1, 1998. (LA).

Medicaid Reporting Anticipated Changes, S.L. 1998-212, Sec. 12.12B (SB 1366, Sec. 12.12B) amends Section 11.11 of S.L. 1997-443 to require the Department of Health and Human Services (Department) to report to the Fiscal Research Division and the House Appropriations subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources or the Joint Legislative Health Care Oversight Committee on any anticipated changes in the Medicaid Program that are significant enough to require a change in the State Plan or approval by the Health Care Financing Administration. The reports shall be made prior to the effective date of the anticipated change. In addition, if the Department obtains a Medicaid waiver to implement two long-term care pilot projects, it shall report the waiver, within 30 days of its receipt, to the House Appropriations subcommittee on Human Resources, the Senate Appropriations Committee on Human Resources, and the Aging Study Commission. If the waiver is obtained, and the pilot projects are implemented, the Department may not expand the pilots without prior reporting. This section became effective July 1, 1998. (LA)

Medicaid Coverage for Elderly and Disabled People, S.L. 1998-212, Sec. 12.12D (SB 1366, Sec. 12.12D) raises the level of Medicaid coverage for all elderly and disabled persons who have incomes equal to or less than one hundred percent (100%) of the

federal poverty guidelines. Coverage becomes effective no earlier than January 1, 1999. (JY)

Adult Care Home Staffing Ratio Changes/Reimbursement Rate Increase/Staffing Grants, S.L. 1998-212, Sec. 12.16B (SB 1366, Sec. 12.16B) amends G.S. 131D-4.3 by: (1) placing into the statute minimum staffing/resident requirements for adult care homes (the only difference from current rule is the third shift (evening) minimum staff/resident requirement by decreasing the staff/resident ratio from 1/50 to 1/30); (2) requiring adult care homes to provide staff to meet the needs of the facility's heavy care patients equal to the amount of time reimbursed by Medicaid; (3) effective October 1, 1998, increasing the maximum monthly rate for residents in adult care homes from $915 to $956; and (4) requiring the Department of Health and Human Services to use appropriated funds for staffing grants to adult care homes that are required to add staff or have added staff to comply with the third shift staffing requirements. Unless otherwise stated this, section becomes effective January 1, 1999. (JY)

Adult Care Home Bed Vacancies/Extension, S.L. 1998-212, Sec. 12.16C (SB 1366, Sec. 12.16C) extends until August 26, 1999, the moratorium on approval of additional adult care home beds with the following exceptions: (1) counties where the vacancy rate of available adult care home beds is 15% or less of the total number of available beds in the county as of August 26, 1997 (the original effective date of the moratorium), and where no new beds have been approved or licensed in the county or plans submitted for approval; (2) approved projects that have not been constructed; and (3) beds that are part of an application filed with the Department of Health and Human Services before August 28, 1997, or between July 1, 1998 and August 1, 1998. This section became effective July 1, 1998. (JY)

Health Care Personnel Registry, S.L. 1998-212, Sec. 12.16E (SB 1366, Sec. 12.16E) amends G.S. 131E-256 to: (1) extend the requirements regarding healthcare personnel to State operated facilities as provided in G.S. 122C-22, and to residential facilities and hospitals for the mentally ill, developmentally disabled, or substance abusers pursuant to G.S. 122C-23; (2) expand the definition of health care personnel to include "unlicensed assistant personnel who provide hands-on care including habilitative aides and health care technicians"; and (3) clarify that only one petition must be filed to contest an action by the Department of Health and Human Services in order to list an action on the Registry. The section becomes effective January 1, 1999. (JY)

Child Welfare Systems Improvements, S.L. 1998-212, Sec. 12.22 (SB 1366, Sec. 12.22) amends Sec. 11.57 of S.L. 1997-443 to: (1) provide that funds appropriated to the Department of Health and Human Services, Division of Social Services to pay for additional foster care and adoption worker positions may also be used to pay for supervisor positions; and (2) recodifies, as Article 3B of Chapter 143, the State Child Fatality Review Team. The section also specifies that fatality reviews will include interviews with individuals having pertinent information; requires the review team to consult with the district attorney before publicly releasing findings and recommendations;

and authorizes the review team to receive copies of materials necessary to the conduct of a fatality review. The section became effective July 1, 1998. (JY)

Report on Progress Towards Automated Application System, S.L. 1998-212, Sec. 12.25 (SB 1366, Sec. 12.25) requires the Department of Health and Human Services to make a final report to the House and Senate Appropriations Committees on Human Resources within one week of the convening of the 1999 General Assembly on the Department's progress in developing and implementing a single statewide automated application system for all means-tested public assistance benefit programs. This section became effective July 1, 1998. (JY)

Biometrics Law Changes, S.L. 1998-212, Sec. 12.26A (SB 1366, Sec. 12.26A) amends G.S. 108A-25.1 to require the Department of Health and Human Services (DHHS) maintain a method of identifying recipients of Work First, food stamp, and medical aid; and also maintain a method of identifying applicants and payees. DHHS is not required to identify institutionalized adults, children under the age of 18 (unless they are minor parents who are applying for or receiving assistance), or other individuals that federal law or regulation requires DHHS to exclude. A new subsection (d) requires DHHS to make biometric identification a condition of eligibility for Work First, food stamps, and medical assistance programs for all applicants and payees. DHHS must implement the phase-in process of the uniform system of recipient identification by October 1, 1999, have the system established by October 1, 2000, and report quarterly to the Joint Legislative Public Assistance Commission on its progress towards statewide implementation. This section became effective July 1, 1998. (JM)

Welfare Law Changes, S.L. 1998-212, Sec. 12.27A (SB 1366, Sec. 12.27A) includes the General Assembly's approval of the "North Carolina's Temporary Assistance for Needy Families State Plan FY 1998-2000," prepared by the Department of Health and Human Services (DHHS), as amended by the Temporary Assistance for Needy Families Welfare-to-Work Formula Grant Plan prepared by the Department of Commerce, and as amended by changes to Chapter 108A.

The section amends G.S. 108A-27(a) to provide that the purpose of the Work First Program is to promote self-sufficiency and the gradual elimination of generational poverty, not merely to reduce the welfare rolls. The section also amends G.S. 108A-27.9(c) to require the State Plan to include provisions to ensure that recipients who are sanctioned are given a clear explanation of the sanction and are informed of their right to legal counsel. The State Plan must also include grievance procedures to resolve complaints by Work First participants.

The section amends G.S. 114-41(a)(2) to require the Inspector General provide each county director of social services with a copy of the policies and standards for the investigation of fraud, abuse, waste, and mismanagement in the means-tested public assistance programs. If the Inspector General determines that a county is not complying with the policies, the Inspector General must notify the agency's director of the noncompliance and make recommendations for appropriate action.

G.S. 108A-27.2 is amended to require DHHS to: 1) ensure that the provisions of G.S. 108A-27.9(c) that relate to the appropriate procedure for instituting sanctions are developed and implemented across the State; and 2) develop and implement an appeals process for a county's Work First Program that complies with the procedures related to sanctioning for all counties.

The section amends G.S. 108A-27.12 by specifying that DHHS may not reduce or reallocate State or county funds previously obligated or appropriated for Work First County Block Grants or child welfare services. G.S. 108A-27.16 is amended to allow the Director of the Budget to direct the Secretary of DHHS to attempt to access any available federal funds, if the Director declares that the State, an individual county, or an individual region is in a state of economic emergency regarding a lack of available funds for Work First Family Assistance.

G.S. 108A-29 is amended to require that the First Stop Employment Assistance program be established specifically in the Employment Security Commission, and the program shall be administered by the Chair of the Employment Security Commission. County departments of social services are allowed to enter into a cooperative agreement with the community college system or other entity to operate the Job Preparedness component. The Job Service Employer Committee or Workforce Development Board of each county must continue the study of the working poor (NC WORKS) in their respective counties. Each Committee or Board must submit a report on its findings by May 1 of each year to the Joint Legislative Public Assistance Commission, the Senate Appropriations Committee on Human Resources, the House Appropriations Subcommittee on Human Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the House Appropriations Subcommittee on Natural and Economic Resources.

The section also amends G.S. 96-14 by adding a new subdivision that provides that a claimant who leaves work as a result of domestic violence committed upon the claimant or upon the claimant's minor child shall be considered to have left work for good cause. This section became effective July 1, 1998. (JM)

Early Intervention Services/Referrals/Study, S.L. 1998-212, Sec. 12.32A (SB 1366, Sec. 12.32A) amends Sec. 11.12 of S.L. 1997-443 to create up to 41 new positions in the Department of Health and Human Services, Division of Services for the Deaf and Hard of Hearing, to expand early intervention-related preschool services for children from birth to five with priority given to children birth through two. It also provides that the North Carolina Schools for the Deaf and other agencies providing early intervention services to children from birth to five shall implement procedures that: (1) inform parents of children newly identified with hearing loss of the services available to them through Beginnings for Parents of Hearing Impaired Children, Inc.; and (2) if parents consent, notify Beginnings for Parents of Hearing-Impaired Children, Inc. of these children in a timely and appropriate manner. This section became effective July 1, 1998. (JY)

Non-Medicaid Reimbursement Changes, S.L. 1998-212, Sec. 12.33 (SB 1366, Sec. 12.33) amends Section 11.12 of S.L. 1997-443 to adjust the net annual family income eligibility standards from 100 percent of the federal poverty level to 115 percent of the

federal poverty level for individuals receiving medical services provided under the Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. This section became effective July 1, 1998. (LA).

Developmental Disability Services Review and Initiatives, S.L. 1998-212, Sec. 12.34(b) (SB 1366, Sec. 12.34(b)) directs the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Department) to expand and enhance person-centered and family support services in an effort to keep developmentally disabled individuals in their homes. The section offers several objectives the Department must address in order to achieve this goal. The Department shall work with other State agencies to implement initiatives designed to decrease the length of time eligible individuals with developmental disabilities must wait for appropriate services provided by the State and local mental health systems. The Department shall report its progress to the Senate Appropriations Committee on Human Resources and the House Appropriations Subcommittee on Human Resources no later than May 1, 1999. This report must include the impact of expansion funds allocated in S.L. 1998-212 on the waiting list for services for developmentally disabled individuals. This section became effective July 1, 1998. (LA)

Civil Commitment/Forensic Unit, S.L. 1998-212, Sec. 12.35B (SB 1366, Sec. 12.35B) amends G.S. 15A-1321 to provide for the automatic commitment to a Forensic Unit operated by the Department of Health and Human Services (Unit) of defendants who have been found not guilty by reason of insanity of a crime involving the infliction or attempted infliction of serious physical injury or death. Once committed to the Unit, the defendant must reside there until the defendant is released in accordance with Chapter 122C of the General Statutes. A Forensic Unit is a special 24-hour treatment and custody facility, located at Dorothea Dix Hospital, designed and staffed to assure the highest level of protection for the involuntarily committed client and the general public. Prior to the enactment of this section of S.L. 1998-212, defendants found not guilty of crimes by reason of insanity were automatically committed to "State licensed 24-hour facilities or hospitals designated by the Secretary of Human Resources as facilities for the custody and treatment of involuntary clients". The defendant was committed specifically to a Forensics Unit at the discretion of the court. This section becomes effective January 1, 1999. (LA).

Area Mental Health Authority Program Accountability, S.L. 1998-212, Sec. 12.35C (SB 1366, Sec. 12.35C) amends portions of Chapter 122C to ensure area program compliance with applicable standards for the management and operation of area authorities and their contract agencies, and to ensure the use of federal funds according to federal requirements. Subsection (a) amends G.S. 122C-112(a) to require the Secretary of the Department of Health and Human Services (DHHS) to monitor the fiscal and administrative practices of area mental health programs and to ensure that the practices are consistent with professionally accepted accounting and management principles and achieve maximum fiscal accountability. In the past, the General Assembly has granted

DHHS the authority to adopt and enforce rules governing the expenditure of all area authority funds. However, this section specifically requires the Secretary to ensure maximum fiscal accountability. The Secretary is authorized to adopt temporary rules to implement these changes. Any temporary rules adopted under this provision shall not become effective until 60 days after the Secretary has provided notice and opportunity for written comment.

G.S. 122C-112(b) is amended to authorize the Secretary to directly enter into contracts with private providers or other public service agencies to serve clients of one or more area authorities and to reallocate area program funds to pay for the contracted services if:

- the area authority refuses or has failed to provide adequate services to clients within its service area, and clients in the area would be harmed or not served if required to obtain the services from another area authority, and there is a private provider or pubic service agency willing to contract within the area authority's service area; or
- there is no area program available to act as the administrative entity under a proposed contract with a private provider or other public agency, or the administering area program refuses or has failed to properly manage and administer a contract with a contract provider and clients will be harmed or not be served if services are not provided under the contract.

Before actually entering into a contract, the Secretary must provide the applicable area boards with (1) written notification of the Secretary's intent to contract, and (2) an opportunity to be heard.

G.S. 122C-191(d) is amended to allow the Secretary to determine whether area authorities are meeting applicable standards of practice. G.S. 122C-191(d) requires the Secretary adopt rules pertaining to monitoring State and area facilities for compliance with rules governing their management and operation. These changes authorize the Secretary to draw conclusions and make determinations based on the results of this process.

Additionally, the Secretary shall ensure that contract forms used between area authorities and the Department are standardized. The Secretary shall report on the methods DHHS has developed to ensure program accountability to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services and the Joint Legislative Health Care Oversight Committee not later than March 1, 1999. The report must also contain any recommendations the Secretary may have to enhance the accountability of area mental health programs. This section became effective July 1, 1998. (LA)

Early Childhood Education and Development Initiatives Reform, S.L. 1998-212, Sec. 12.37B (SB 1366, Sec. 12.37B). See **CHILDREN AND FAMILIES**.

Division of Youth Services Training Schools Evaluation, S.L. 1998-212, Sec. 12.39 (SB 1366, Sec. 12.39) directs the Department of Health and Human Services (DHHS), Division of Youth Services to use funds to ensure: (1) multidisciplinary diagnoses and evaluations are made of all students in training schools; and (2) resources and services are

provided to training school students identified as children with special needs. This section became effective July 1, 1998. (JY)

HIV/STD Prevention Services/Evaluation and Accountability of Grantees, S.L. 1998-212, Sec. 12.51 (SB 1366, Sec. 12.51) allows the Department of Health and Human Services, Division of Epidemiology (DHHS), to continue to contract with community-based organizations, local health departments, and other entities to provide services to high-risk individuals, but imposes requirements to ensure evaluation and accountability of grantees. DHHS must adopt standards for an annual evaluation and certification of these agencies by April 1, 1999, and report the standards to the House and Senate Appropriations Committees by May 1, 1999. Effective January 1, 2000, DHHS will be prohibited from allocating HIV prevention funds to agencies that do not meet certification standards. This section became effective July 1, 1998. (JY)

NC Substance Abuse Professional Certification/Technical Correction, S.L. 1998-217, Sec. 25 (SB 1279, Sec. 25) amends Sections 17 and 18 of S.L. 1997-492 by adding additional requirements for potential candidates for certification as a "Clinical Addictions Specialist". These requirements consist of the completion of any prescribed continuing education requirements for the renewal of the individual's original certification, including the payment of any fees associated with the continuing education, plus payment of the clinical addictions certification fee. This section is effective on and after October 1, 1998. (LA)

Studies

Referrals to Existing Committees

Study of Need to Increase Physician Pay Rate, S.L. 1998-212, Sec. 12.13 (SB 1366, Sec. 12.13) directs the Joint Legislative Health Care Oversight Committee to study the need to increase the Medicaid reimbursement rate paid to physicians to an amount no greater than the Medicare reimbursement rate for physician services, and to identify a source of the Medicaid funds to pay for any proposed increase. The Commission shall report its findings to the 1999 General Assembly. This section became effective July 1, 1998. (LA)

Referrals to Departments, Agencies, Etc.

Department of Health and Human Services Evaluation of Work First Program, S.L. 1998-212, Sec. 5(f) (SB 1366, Sec. 5(f)) directs the Department of Health and Human Services (DHHS) to: 1) evaluate the Work First Program by determining the success of the current waiver program in effect until the new Temporary Assistance to Needy Children (TANF) State Plan is approved; and 2) contract with an independent consultant with expertise in evaluating large social programs to plan and design an evaluation of the Work First Program. DHHS must report the results of the evaluation and any

recommendations to the Senate Appropriations Committee on Human Resources and the House Appropriations Subcommittee on Human Resources by March 1, 1998. The independent consultant must report to the Senate Appropriations Committee on Human Resources and the House Appropriations Subcommittee on Human Resources by April 1, 1999. This section became effective July 1, 1998. (JM)

Department of Health and Human Services Plan for Substance Abuse Program, S.L. 1998-212, Sec. 5(g) (SB 1366, Sec. 5(g)) directs the Department of Health and Human Services (DHHS) to develop a substance abuse prevention program plan targeted to children. DHHS must also develop a plan targeted to the specialized needs of Temporary Assistance to Needy Families children who reside in a family with a substance-abusing parent. DHHS must report its recommendations to the Senate Appropriation Committee on Human Resources and the House Appropriations Subcommittees on Human Resources no later than April 1, 1999. This section became effective July 1, 1998. (LA).

Office of Strategic Planning, S.L. 1998-212, Sec. 12.2 (SB 1366, Sec. 12.2) provides that it is the intent of the General Assembly that the Department of Health and Human Services (DHHS) provide coordinated and strategic planning for the State's health and human services. DHHS is directed to study the advisability of creating a strategic planning office in the Office of the Department's Secretary. In addition, DHHS is required to report its findings and recommendations to the House and Senate Appropriations Committees on Human Resources no later than March 15, 1999. This section became effective July 1, 1998. (JY)

Participation in Medicaid Dental Program, S.L. 1998-212, Sec. 12.12C (SB 1366, Sec. 12.12C) requires the Department of Health and Human Services (DHHS) to evaluate and recommend strategies to increase the level of participation of dentists in the Medicaid dental program and to improve the Medicaid program's provision of preventive services to Medicaid patients. DHHS shall report to the House Appropriations Subcommittee on Human Resources and the Senate Appropriations Committee on Human Resources no later than April 30, 1999. This section became effective July 1, 1998. (LA)

Division of Facility Services/Propose Fee Schedule, S.L. 1998-212, Sec. 12.16D (SB 1366, Sec. 12.16D) requires the Department of Health and Human Services, Division of Facility Services (DHHS) to develop a proposed schedule of fees to defray the cost of processing and reviewing construction plans for social and health care facilities and for conducting physical plant inspections of these facilities. DHHS shall report to the House and Senate Appropriations Committees no later than December 1, 1998. The report shall contain recommended legislation. This section became effective July 1, 1998. (JY)

Agency Oversight of Care Provided to Persons with Mental Illness and Developmental Disabilities, S.L. 1998-212, Sec. 12.35D (SB 1366, Sec. 12.35D) directs the Department of Health and Human Services (DHHS) to review the effectiveness of existing agency oversight with respect to family care centers, foster homes, nursing homes, and adult care homes that provide care for persons with mental illness and for

persons with developmental disabilities. DHHS shall report its findings and recommendations to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services and the Joint Legislative Health Care Oversight Committee no later than April 1, 1999. This section became effective July 1, 1998. (LA)

NC Healthy Start Foundation/Reporting, S.L. 1998-212, Sec. 12.40 (SB 1366, Sec. 12.40) amends S.L. 1997-443, Sec. 15.29 by changing the required reporting dates and requiring the N.C. Healthy Start Foundation to report to the Senate Appropriations Committee on Human Resources and the House Appropriations Subcommittee on Human Resources on the following information: (1) State fiscal year 1997-98 program activities; (2) State fiscal year 1997-98 itemized expenditures and fund sources; (3) State fiscal year 1998-99 planned activities, objectives, and accomplishments; and (4) State fiscal year 1998-99 estimated itemized expenditures and fund sources. The section also changed the required reporting dates. This section became effective July 1, 1998. (JY)

Prevent Blindness Inc./Reporting, S.L. 1998-212, Sec. 12.41 (SB 1366, Sec. 12.41) amends S.L. 1997-443, Sec. 15.33 by requiring the Prevent Blindness, Inc. report to the Senate Appropriations Committee on Human Resources and the House Appropriations Subcommittee on Human Resources on the following information: (1) State fiscal year 1997-98 program activities; (2) State fiscal year 1997-98 itemized expenditures and fund sources; (3) State fiscal year 1998-99 planned activities, objectives, and accomplishments; and (4) State fiscal year 1998-99 estimated itemized expenditures and fund sources. The report is due April 15, 1999. This section became effective July 1, 1998. (JY)

AIDS Drug Assistance Program ADAP, S.L. 1998-212, Sec. 12.46A (SB 1366, Sec. 12.46A) directs the Department of Health and Human Services (DHHS) to develop and implement a cost containment plan by January 1, 1999, so that more clients may be served. DHHS shall report to the House and Senate Appropriations Committees by January 1, 1999. DHHS also shall develop a comprehensive information system on AIDS/HIV clients. The system must include information on program usage patterns including frequency of prescription purchases, types of medications prescribed, and patient compliance with treatment recommendations. This section became effective July 1, 1998. (JY)

INSURANCE

[Linda Attarian (LA), Linwood Jones (LLJ), Ebher Rossi (ER)]

Enacted Legislation

Children's Health Insurance, S.L. 1998-1EX (SB 2, 1998 Extra Session), as amended by S.L. 1998-212, Sec. 12.12(c) (SB 1366, Sec. 12.12(c)). See **CHILDREN AND FAMILIES.**

Medical/Hospital Charter Conversions, S.L. 1998-3 (SB 993) ("Blue Cross" conversion) establishes the procedure for a hospital, medical, or dental service corporation to convert from a not-for-profit entity to a for-profit entity. As of 1998, there was only one medical and hospital service corporation licensed in North Carolina (Blue Cross Blue Shield) and only one dental service corporation (Delta Dental). Because this legislation was designed primarily to address the possibility of a future conversion by Blue Cross, the remainder of this summary refers to "Blue Cross" even though the legislation applies to Blue Cross, Delta Dental, and any other medical, hospital, or dental service corporation that might be formed in the future.

The centerpiece of this legislation is the requirement that a service corporation that converts to a for-profit company must issue 100% of its initial stock to a newly-created foundation. The foundation will use the proceeds to benefit the health needs of all North Carolinians. The issuance of 100% of the stock to a foundation enables the public to capture its "public trust" interest in Blue Cross while still allowing Blue Cross to maintain its assets and reserves intact.

Amending the charter - Prior law required 2/3 of Blue Cross certificate holders (policyholders) to approve a conversion. The act eliminated this requirement on the grounds that the certificate holders do not own the company. However, the Commissioner of Insurance (Commissioner), in his evaluation of the plan, must still determine that the contractual rights of the certificate holders to have their claims paid will not be impaired by the conversion. In addition, the Commissioner may also examine the impact of the proposed conversion on health care accessibility and affordability. The act also changes prior law with respect to the vote required by the board of directors for conversion. The board would only need a majority vote (rather than a two-thirds vote) to move forward on a conversion.

No mutualization - Prior law allowed Blue Cross to convert to either a stock company or a mutual. The act eliminates the ability of Blue Cross to become a mutual because of concerns about the impact of mutualization on the public's ownership rights and the valuation of those rights at the time of an eventual conversion to a stock company.

What constitutes a conversion - To determine whether Blue Cross has converted, the following tests apply. Blue Cross is considered to have converted if any of the following occur:

- It merges with a for-profit company.

- It sells or transfers any stock to an outside investor (i.e., the for-profit subsidiaries of Blue Cross must be wholly-owned by Blue Cross to avoid conversion).
- It sells or transfers 10% or more of its assets in one transaction or a series of related transactions to a for-profit business. However, the following do not count in determining this 10% limit:
  - The purchase of health insurance policies from a for-profit company, to the extent those policies insure North Carolina residents. The value of any policies insuring non-North Carolinians is counted in determining the 10% (if approved by the Commissioner).
  - The purchase of the common stock of a for-profit company to the extent that the stock value reflects health insurance policies covering North Carolina residents (if approved by the Commissioner).
  - The granting of security interests for money borrowed.
  - The transfer, in the ordinary course of business of real estate, stocks, and other securities within the investment portfolio.
- Its annual revenues from for-profit activities exceed 40% of total revenues.
- Its assets used in for-profit activities exceed 40% of total assets.

In addition, the Commissioner can review and consolidate transactions of Blue Cross in determining whether a conversion has occurred. If the Commissioner, after consolidating transactions of Blue Cross, determines that a transaction has occurred, Blue Cross has 12 months in which to file a plan of conversion with the Commissioner. This 12-month period is suspended while any appeal of the Commissioner's order is pending. The law provides for an expedited appeals process. An appeal of the Commissioner's order bypasses the superior court and goes directly to the Court of Appeals. Any party may petition the Supreme Court to hear the appeal without it being first heard by the Court of Appeals.

Filing the Conversion Plan - If Blue Cross decides to convert to a for-profit company, it must seek the approval of the Commissioner. In seeking the Commissioner's approval, Blue Cross must file a "plan of conversion" with the Commissioner and submit a copy of the plan to the Attorney General at least 120 days before the proposed conversion would take effect. The plan of conversion must show the following:

- The purposes of the conversion.
- The articles of incorporation of the new for-profit Blue Cross that will be formed.
- The bylaws of the new Blue Cross.
- How the mode of operations will change, if it all.
- How existing policyholders' claims and rights to reimbursement will be safeguarded in the conversion.
- A statement recognizing that the new Blue Cross is subject to all of the rights, liabilities, and obligations, of the old Blue Cross.
- Proof that the board of directors of Blue Cross has approved the conversion.
- A business plan for the new Blue Cross, including a comparison of recent premium charges by the old Blue Cross and projected premium charges by the new Blue Cross.
- Any conditions that Blue Cross must fulfill by the proposed effective date of the

conversion in order for the conversion to take effect.

- The proposed articles of incorporation and bylaws of the charitable foundation that will be created to receive the fair market value of the converted Blue Cross.

Reviewing the Plan of Conversion - The Commissioner must review the plan. In addition, the public may present written comments to the Commissioner during the comment period and there must also be three public hearings. With the exception of the business plan required to be filed by Blue Cross, the remaining parts of the proposed conversion plan are public records. The Attorney General shall review the portions of the plan relating to the charitable foundation.

Commissioner's Approval of the Plan - The Commissioner shall approve the plan if all of the following conditions are met:

- The conversion plan meets the requirements of the act.
- The new Blue Cross will meet the applicable capital and surplus requirements and all other standards and conditions that apply to health insurance companies.
- The plan of conversion adequately protects the claims and reimbursement rights of existing policyholders.
- No director, officer, or employee of Blue Cross will receive a fee or other valuable consideration (other than ordinary compensation) for assisting in the conversion nor will they receive any stock or other assets in the new corporation as part of the conversion.
- Blue Cross has complied with all material requirements of the Insurance Code (Chapter 58), and there are no pending disciplinary actions against it.
- The plan of conversion is fair with respect to the contract rights of both the existing and prospective policyholders.
- The plan of conversion is in the "public interest".
- The plan contains a voting and registration agreement.
- The Attorney General approves: (1) the finding that 100% of the fair market value will be transferred; (2) the foundation's articles of incorporation and bylaws; and (3) the voting and registration agreements the foundation and Blue Cross propose to enter into.

When is the Plan in the public interest - To protect the public interest, the conversion plan must provide that 100% of the fair market value of Blue Cross will be transferred to a tax-exempt 501(c)(4) foundation. It will be conclusively presumed that 100% of the fair market value is transferred if all of the Blue Cross stock issued at the time of conversion goes to the foundation. In evaluating whether the plan is in the public interest, the Commissioner may also look at the effect of the proposed conversion on the accessibility and affordability of health care.

Creation of the foundation - The foundation will be created to receive the fair market value of Blue Cross upon conversion. The purpose of the foundation will be to "promote the health of the people of North Carolina." The foundation's articles of incorporation, by-laws, and any agreements between the foundation and the new Blue Cross are also subject to the approval of the Attorney General. The foundation is prohibited, for a period of ten years after the conversion, from setting up an insurance company or similar entity that would compete against the new for-profit Blue Cross. The

foundation may not engage in political activity. It would also have its own advisory committee to offer public input on its activities. The foundation would be required to pay out substantially all of its income, less operating expenses, or 5% of its net assets, whichever is less, in furtherance of its charitable mission. In no event is the foundation required to invade the corpus of the trust.

Governance of the foundation - The foundation will be governed by a board of directors, completely independent of any control by the new for-profit Blue Cross. The initial board of directors will consist of 11 members. These 11 members will be appointed by the Attorney General from a list of 22 nominees selected by an independent advisory committee. The advisory committee will determine the qualifications of the initial members of the board of directors of the foundation and will be comprised of the following:

- Three business representatives selected by NCCBI;
- Three public and private medical school representatives selected by the UNC Board of Governors;
- Three foundation or nonprofit representatives selected by the NC Center for Nonprofits;
- One representative of the Hospital Association;
- One representative of the Medical Society.

However, all nominees must be North Carolinians. A search firm will assist the committee in selecting qualified nominees.

The initial terms of the foundation's board of directors will be staggered so that some serve two-year terms and some serve four-year terms. Afterwards, all terms are for four years. A member can serve two full consecutive terms or ten consecutive years. Thereafter, the board becomes self-perpetuating, with its members serving four year terms and chosen in accordance with the foundation's by-laws. The foundation may increase in size to 15 members or decrease in size to 9 members, although no member may be removed from office in the middle of a term solely because of a decision to reduce the board's size.

Relationship between foundation and the new Blue Cross - The foundation will initially own 100% of the stock of the new Blue Cross. The foundation and the new Blue Cross will enter into a voting agreement that ensures that the foundation will vote its stock in favor of the directors nominated by the new Blue Cross. The new Blue Cross will have some control over the timing of the foundation's initial sale of stock to the public, and it will also be able to issue additional shares to the public. Until 10 years have elapsed from the conversion and the foundation has divested itself of 95% of the Blue Cross stock it received, no foundation members may serve on the Blue Cross board and no Blue Cross board members may serve on the foundation board.

Challenges to a conversion plan - The Attorney General retains full power to take any legal action necessary to enforce the rights of the public in the event of a conversion or proposed conversion. Any person aggrieved by an order of the Commissioner approving or disapproving a conversion has 30 days after the issuance of the order to appeal to the Superior Court of Wake County for judicial review of the order.

This law took effect May 22, 1998. (LLJ)

Supplemental Insurance Benefits, S.L. 1998-187 (SB 350) abolishes the more than twenty different employee insurance committees operating within the Department of Health and Human Services (DHHS) and replaces them with one employee insurance committee that will serve all of DHHS.

Employee insurance committees are responsible for evaluating and selecting the types of supplemental insurance products (such as life insurance, cancer insurance, disability insurance, dental insurance, etc.) that are available to State employees through payroll deduction. The committees also select the vendors that provide these products. Other State agencies are each represented by one employee insurance committee. DHHS has for years had over twenty different committees representing its various divisions and institutions. (These insurance products are provided separate and apart from other insurance benefits offered through the State's centralized flexible benefits program). This act takes effect on January 1, 1999. (LLJ)

Insurance and Insurance-Related Changes, S.L. 1998-211 (HB 926) makes changes to several insurance and insurance-related laws.

Regulation of Charitable Annuities - Many public and private universities, as well as other educational institutions and nonprofit organizations, give annuities to donors in exchange for the donation of stocks, bonds, real estate, or other property. An annuity is a contract of insurance, and only licensed insurance companies are authorized to issue them. Section 1 exempts these entities from having to become licensed as insurance companies if they meet the following requirements:

- The organization is a nonprofit 501(c)(3) organization, Section 170 private foundation, or public or private university or community college.
- The organization has at least $100,000 in liquid assets and has been in active operation for at least 3 years. This particular requirement does not apply to public and private universities and community colleges that were issuing annuity agreements on or before October 30, 1998, nor to private endowment foundations set up for the benefit of the universities and community colleges as long as the community college or university that the foundation supports has been in operation for at least 3 years.
- The organization discloses, on each annuity agreement issued on or after November 1, 1998, that the annuity is not issued by an insurance company, is not regulated by the State, and is not backed up by the insurance guaranty fund in the event of default.

In addition, charitable organizations must make their IRS Form 990s (or Form 990 EZ or comparable information) available to donors at the time of solicitation, with the information updated at the time the annuity is executed. The Form 990 must be made available to the Commissioner of insurance upon request. All entities issuing charitable annuities must also notify the Commissioner by January 1, 1999. For those organizations that begin issuing annuities later, the notification must occur within 90 days of the issuance of the first annuity. The Department of Insurance may fine an entity up to

$1,000 per annuity agreement if the entity is found to be in violation of this law and refuses to comply with the law after being notified by the Commissioner of the violation.

The Department of Insurance will examine the issue of charitable gift annuities and report to the legislature next session on whether the solvency protections in this law are adequate to protect donors. This law does not apply to charitable remainder trusts or other types of charitable fundraising that do not involve the issuance of annuities.

Health Insurance Changes -

- Currently, the Commissioner of Insurance must approve Preferred Provider Organization (PPO) contracts between insurance companies and providers. The law is changed to provide that if the PPO contract has not been disapproved by the Commissioner within 90 days of its filing, it is deemed approved.
- The laws governing the priority of distribution of assets of an insolvent Health Maintenance Organization (HMO) are rewritten to conform to the priority laws governing distribution of an insolvent insurance company's assets.
- A child moving from the Health Insurance Program for Children, created during the 1998 special session, to another insurance plan may count coverage under the Program in satisfying any waiting period under the new plan (assuming there is no more than a 63-day gap between coverages).
- The definition of a "late enrollee" under the small employer group health insurance laws is amended so that it is consistent with the definition of "late enrollee" under the health reform legislation passed by the legislature last year. It retains the requirement that an initial enrollment period under small employer plans be 30 days.
- A change is made to clarify that the insurance company, not the employer, decides whether the group health plan it provides to the employer uses age bracket rating or composite rating for premiums. This provision applies to the small employer group market.
- A change is made to clarify that the Small Employer Group health insurance laws do not impair the Commissioner's existing authority to require medical and hospital service corporations and HMOs to have their rates approved before using them.
- The law governing insurance carriers in the small employer health insurance market is updated and clarified to provide that the election that each insurer makes between taking all applicants (a risk-assuming carrier) or participating in the reinsurance pool (reinsuring carrier) applies to all carriers in the small group market, not just those in the market at the time it first began to be regulated in the early 1990s. The carrier makes an initial election for a two-year period. The carrier makes a subsequent election to which it is bound for 5 years.

Medicare Supplemental Insurance) -

- An insurance company selling Medicare supplemental policies may not base premiums on the policyholder's *attained* age (where premiums increase as the policyholder ages) unless it has clearly disclosed this to the policyholder. The disclosure must include an illustration showing projected premium increases over the next years, a statement that *attained age rating* means premiums will go up as the policyholder gets older, and a statement that premiums for other supplemental

policies may be determined on an issue age basis and that those premiums would not increase with attained age.

- Insurers who sell Medicare supplemental insurance must make the most basic of the 10 supplemental policies (Plan A) available to persons who are on Medicare by reason of disability without regard to the person's medical condition or health status. This law will expire November 1, 2001, in order to give insurers who sell MedSupp policies an opportunity to evaluate this change during the three years it will be in effect.
- The Commissioner of Insurance is authorized to adopt rules necessary to require Medicare supplemental policies to conform the requirements of federal law concerning acceptable loss ratios and other federal requirements.

Life Insurance - The law on life insurance policies is amended to provide that a policy summary is not required for policies sold subject the Commissioner's rules for life insurance illustrations. The summary would have duplicated the life insurance illustration. An "illustration" shows the purchaser the investment value and worth of the policy over time.

Property and Casualty Insurance - The North Carolina Condominium Act requires condominium associations purchase property insurance on both the common elements and the individual condominium units. The national Uniform Condominium Act on which the North Carolina Condominium Act was based requires the associations purchase property insurance on individual units only when those units share horizontal boundaries (i.e., stacked units). The amendments provide that, except in cases of stacked units, associations are not required to obtain property insurance on the individual units. The association remains responsible for insuring the common elements.

Agents and Adjusters -

- The primary hearing statute for license revocations and suspensions concerning agents and others regulated by the Department of Insurance is amended to delete antiquated notice and hearing provisions and to tie the notice and hearing procedures specifically to the Administrative Procedures Act.
- Each individual who holds a license from the Department of Insurance must notify the Department of his or her residential address, any change in that address, and any criminal conviction (excluding motor vehicle infractions). In addition, the Commissioner may send any required notice to the individual at this address by first-class mail, or he may have the Department give the notice in person.
- An outdated requirement that a partnership or corporation that is licensed as an agent, broker, or limited representative must have a place of business in North Carolina is repealed. However, each member of the partnership or officer or employee of the corporation personally engaged in soliciting or negotiating policies must still have the appropriate individual license (agent, broker, or limited representative) and must be registered with the Commissioner.
- The agent licensing law is clarified so that the reciprocity law for agents, brokers, and limited representatives applies to *applicants* for licensure as well as those already licensed.

- The law governing emergency adjusting work in North Carolina by out-of-state adjusters is rewritten. The 30-day limit in the current law on such adjusting by nonlicensed out-of-state adjusters is replaced with a time period "to be determined by the Commissioner." "Emergencies" include, but are not limited to, natural disasters.
- Currently, G.S. 58-33-130(c) requires an agent or broker to provide evidence to the Commissioner of Insurance of completion of required continuing education in order to renew an appointment with an insurer or renew his license. The act rewrites this provision to provide that the agent's or broker's license automatically lapses for failure to comply with the continuing education requirements.

Insurance Company Regulation -

- The smallest farm mutuals - those with less than $150,000 in written premium and fewer than 400 policyholders - are no longer required to file quarterly financial reports with the Department of Insurance. However, they must file an annual statement or an audited financial statement prepared by a Certified Public Accountant.
- The laws governing viatical settlement companies are amended to remove the authority of the Commissioner of Insurance to require those companies to post bonds. Viatical settlement companies pay terminally-ill patients in exchange for an assignment of their life insurance policies.
- The 20-vote limit on voting by proxy in a mutual insurance company is eliminated. The proxy agreement, previously valid for 3 months, will now be valid for up to 12 months.
- The law on the Commissioner's approval of insurance company forms is clarified so the Commissioner approves forms only for insurance companies licensed and admitted to do business in North Carolina, not surplus lines companies.
- Aviation insurance is specifically exempted from the surplus lines insurance law. The Department of Insurance considered it to be exempt anyway under the category of "wet marine and transportation insurance".
- An outdated statutory reference in the laws governing the North Carolina Insurance Underwriting Association, the association that administers the Beach Plan, is corrected.

Bail Bondsmen -

- Currently, an applicant for a bail bondsman or runner's license must be of good moral character and not have been convicted of a felony or a crime of moral turpitude. A person already holding one of these licenses may have his or her license revoked or suspended for violating any law relating to bail or for conviction of a felony. The law is amended to *allow* the Commissioner to deny, revoke, or refuse to renew a bail bondsman or runner's license for the conviction of a misdemeanor or any crime involving moral turpitude and to *require* the Commissioner to deny, revoke, or refuse to renew the license if the applicant or licensee has ever been convicted of a felony.

- The number of hours of educational training in bail bond laws that an applicant must have in order to take the examination for licensure as a bail bondsman or runner is reduced from 20 to 12.
- The number of annual continuing education hours required of bail bondsmen and runners is reduced from ten to six.
- The requirement that a bail bondsman file a duplicate monthly bond report with the clerk of superior court in each county in which the bondsman is obligated on bonds is eliminated.
- A bondsman or runner's license automatically lapses for failure to meet the continuing education requirements. The Commissioner may grant extensions of time to complete continuing education requirements for good cause shown.
- The law on surrendering a defendant is rewritten to: (1) provide 72 hours by which a surety must refund the premium for surrendering a defendant; and (2) adding more specificity to the conditions under which the defendant may be surrendered without return of premium. The conditions include: failure to pay the premium; change of address without notifying the surety; physically hiding from the surety; leaving the State without the surety's permission; or violating a court order.
- The act clarifies that all of the applicable provisions of the Administrative Procedures Act (APA) hearing statutes apply to a disciplinary hearing for a bondsman or runner.

Home Inspectors -

- The definition of a home inspection in amended so that a written evaluation of only *one* component of a home is no longer considered a "home inspection." At least *two* components must be evaluated before the evaluation is deemed a home inspection.
- The process used by the Home Inspector Licensure Board when it rejects an application for licensure is amended. The Board must notify the applicant of the reasons for disapproval. The applicant may, within 30 days, demand that the Board review its decision. The Board must complete the review without undue delay. The applicant may appeal under the APA a subsequent disapproval.
- Current law provides that any crime involving moral turpitude is grounds for suspension, revocation, or denial of a home inspector's license. The act provides that any misdemeanor involving moral turpitude and any felony is grounds for denial, suspension, or revocation of a home inspector license. The act also rewrites the provision on denial, suspension, and revocation of the license for adjudication of incompetency.

Manufactured Home Dealers - A manufactured home dealer must refund to the buyer the full amount of his or deposit on a manufactured home if the buyer has fulfilled his obligations and the *dealer* cancels the purchase.

Most of the provisions of this act took effect either on the date they became law (October 30, 1998) or November 1, 1998. The provisions on condominium insurance, notification by agents of change of address, and bail bondsmen continuing education become effective January 1, 1998. The requirement that Medicare supplemental

insurance carriers offer at least the Plan A Medicare policy to the disabled expires November 1, 2001. (LLJ)

Insurance Law Changes, S.L. 1998-212, Sec. 26B (SB 1366, Sec. 26B) amends G.S. 58-2-131(a),(b)&(d), 58-2-205, 58-7-16(f), 58-7-50(d), 58-7-170(c), and Article 2 of Chapter 58 by adding a new section, G.S. 58-2-134.

Out of State Assets - Prior to the enactment of this section, domestic insurers were required to maintain their records and assets in North Carolina. This measure gives the Commissioner of Insurance (Commissioner) the authority to allow domestic insurers to maintain certain records or assets outside of the state.

Auditing Expenses - This measure requires insurers to reimburse the State for the Department of Insurance's actual auditing expenses when: (i) the audit was conducted outside of the State; (ii) the insurer requested the audit; or (iii) the audit involved an insurer that was insolvent, impaired, or unlikely to meet its obligations. The amount reimbursed under this provision may not exceed $100,000, unless the Commissioner and insurer agree otherwise.

Actuarial Guidelines - The Commissioner may use relevant actuarial guidelines when determining minimum valuation reserves for the issuance and sale of funding agreements.

Mandatory Examinations - This measure changes, from three to five years, the maximum time period between mandatory domestic insurer examinations by the Commissioner.

Rule Making - This measure allows the Commissioner to adopt, amend, and repeal auditing rules so that the Department of Insurance's rules may be substantially similar to the National Association of Insurance Commissioners' model auditing rules.

Mortgage Investment Limitations - This provision modifies the Department's mortgage investment limitations by prohibiting domestic insurers from engaging in any of the following:

1. Investing more than 3% of their admitted assets in any single collateral package that is comprised of mortgage loans with any one person, or mortgage pass through securities and derivatives of mortgage pass through securities.
2. Investing more than an aggregate of 60% of their admitted assets in mortgage loans, mortgage pass through securities, and derivatives of mortgage pass through securities without the Commissioner's consent.
3. Investing more than 40% of their admitted assets on "other mortgage loans."

This mortgage restriction measure further provides that mortgage pass through securities that are issued, insured, or guaranteed by the federal government or agencies as outlined in G.S. 58-7-173(1)(2) & (8) shall only be subject to the "single package collateral limitation" and the "60% aggregate limitation." This section became effective October 30, 1998. Insurers must comply with the above mortgage investment limitations by January 31, 1999, or submit a plan to the Commissioner that place them in compliance by January 1, 2004. (ER)

Clinical Trials Coverage, S.L. 1998-212, Sec. 28.29 (SB 1366, Sec. 28.29) amends the Teachers' and State Employees' Comprehensive Major Medical Plan by requiring the Plan

to provide limited coverage of medically necessary health care services associated with investigational treatment protocols provided in Phase III and IV clinical trials, and in Phase II clinical trials when approved by the Plan.

According to the State Health Plan, a Phase I clinical trial tests the safety, dosage, and effects of a drug on 100 healthy individuals. A Phase II trial tests the effectiveness and side effects on 100 people who have a disease to be treated by the drug. A Phase III trial tests the drug on several thousand people with the disease and compares benefits and long-term side effects. Marketing information, including labels and warnings, are developed in this phase. After the Phase III trial is completed, the drug is subject to FDA approval. A Phase IV trial is a component of the FDA approval process, in which additional clinical data is collected and additional research can be done. This phase may last up to two years. Currently the State Health Plan covers investigational treatments provided in Phase II, III, and IV trials on a case-by-case basis.

Investigational treatment protocols administered in phase I trials are not covered. "Clinical trials" are defined as patient research studies designed to evaluate new treatments, including prescription drugs. Coverage is limited to phase II-IV clinical trials that: 1) involve treatments of life-threatening conditions which have been shown by clinical and preclinical data to be superior to available noninvestigational (traditional) treatment alternatives and at least as effective as the noninvestigational treatment alternatives; 2) are approved by the National Institutes of Health cooperative group or center, the United States Department of Veteran's Affairs, or the United States Department of Defense; 3) approved by applicable qualified institutional review boards; and 4) are conducted in and by facilities and personnel that maintain a high level of expertise because of their training, experience and volume of patients.

The section becomes effective January 1, 1999. (LA)

Industrial Commission/Writ of Habeas Corpus Ad Testificandum, S.L. 1998-217, Sec. 31.1 (SB 1279, Sec. 31.1) authorizes the Industrial Commission to issue a writ of habeas corpus ad testificandum. A writ of habeas corpus ad testificandum is used to bring a prisoner detained in a jail or prison to give evidence before the court or other body for a hearing. The writs would be used to bring before the Commission for a hearing any prisoner who has sued the State under the Tort Claims Act, if a hearing is necessary. The Industrial Commission is also authorized to use these writs in workers' compensation hearings although there are few workers' compensation hearings involving prisoners.

The section became effective on October 30, 1998. (LLJ)

Third Party Administrators for Workers' Compensation Self-Insured Groups, S.L. 1998-217, Sec. 58 (SB 1279, Sec. 58) regulates third party administrators (TPAs) that provide services for employers who are in workers' compensation self-insurance pools. The Commissioner of Insurance must license the TPA. The provision sets out information required to be submitted to the Commissioner for licensure and the grounds upon which the Commissioner may deny, suspend, or revoke a license. License suspension or revocation is automatic for certain specified violations. The Commissioner may also proceed against a TPA in a civil action on behalf of the self-insured employer

group if the TPA's material noncompliance with the law causes loss or damage to the group. These changes follow on the heels of related changes that were made by the legislature in 1997 concerning employers and employer groups that self-insure for workers' compensation. This law takes effect January 1, 2000. (LLJ)

Insurance Regulatory Charge, S.L. 1998-212, Sec. 29A.7 (SB 1366, Sec. 29A.7) sets the percentage rate used to calculate the insurance regulatory charge (the charge that is levied on companies to fund the Insurance Regulatory Fund) at 6% for 1998. (ER)

PSO Medicare Licensing, S.L. 1998-227 (HB 74) creates the State licensure requirements for the operation of a provider-sponsored organization for Medicare beneficiaries. A provider-sponsored organization may serve only Medicare beneficiaries, unless it also holds a Health Maintenance Organization (HMO) license.

Background on federal law - The federal Balanced Budget Act of 1997 established a new Medicare Part C known as "Medicare+Choice". As of January 1, 1999, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, may elect to receive benefits through a Part C Medicare+Choice plan or the existing Medicare fee-for-service plan. The Medicare+Choice plan replaces the current Medicare managed care options and creates a new set of private plan options for Medicare beneficiaries. Under the Medicare+Choice option, Medicare makes a single monthly capitation payment for each of its enrollees. In return the entity agrees to provide or arrange for the full range of Medicare services through an organized system of affiliated physicians, hospitals, and other providers.

One of the options for providing services under Medicare+Choice is a provider-sponsored organization (PSO). A PSO is an organization run primarily by health care providers, who provide services directly to Medicare patients in exchange for a capitated payment. Until the enactment of the federal Balanced Budget Act, health care providers in North Carolina could provide these services only through an HMO. To encourage the development of PSOs nationally, Congress provided in the Balanced Budget Act for a federal PSO license that could be obtained by meeting lower capitalization and solvency standards than were required for HMO licenses in most states, including North Carolina. Congress also allowed states the option of creating a State PSO license. (The authority for a federal license expires in 3 years).

State PSO law - S.L. 1998-227 creates the State license for a PSO. A PSO granted a State license does not need to apply for a federal license. In addition, the State licensing authority does not expire in three years like the federal licensing authority. Among the requirements an entity must meet in order to obtain a PSO license are the following:

- If a hospital is part of the PSO, at least 50% of the governing board of the PSO must be comprised of licensed physicians.
- The sponsoring providers of the PSO must share substantial financial risk in the PSO through capitated payments or other forms of risk sharing.
- The PSO must have a physician licensed in North Carolina as its medical director.

- The PSO must file certain financial information and operating plans with the Department of Health and Human Services for review and approval, including descriptions of the provider credentialing program, utilization review program, quality management program.
- The PSO must have an initial net worth of at least $1.5 million. A lesser amount of net worth, especially in rural areas, may be allowed under certain circumstances. The PSO must also deposit $100,000 with the Department of Health and Human Services to be used in the event of insolvency.

The PSO applicant will submit its license application to the DHHS, and DHHS will forward it to the Department of Insurance. The Department of Insurance has 60 days in which to review the license application and advise DHHS whether the application complies with the financial solvency standards set out in the law. DHHS must consider the advice of the Department of Insurance in determining whether to issue a license to a PSO, but it is not bound by that advice.

In addition, each licensed PSO must submit ongoing financial reports to both Departments for review. DHHS *may* suspend, revoke, or refuse to renew the license of any PSO that operates unlawfully, fails to provide services, or is financially impaired. If the Department of Insurance determines that the PSO no longer has the minimum amount of financial reserves or has become financially impaired, it may recommend either remedial action (such as reducing the volume of new business, adding or reducing providers, etc.) or suspension, revocation, or nonrenewal of the PSO license. If the Department of Insurance recommends suspension, revocation, or nonrenewal of a license and demonstrates that remedial action is not adequate, DHHS is bound by the Department of Insurance's recommendation. The Department of Insurance will be completely phased out of PSO oversight beginning January 1, 2000, on the assumption that DHHS will by that time have the expertise on staff or under contract to monitor the solvency of PSOs.

DHHS will periodically report to the legislature's Health Care Oversight Committee on PSO regulation. This law took effect November 5, 1998. (LLJ)

LOCAL GOVERNMENT

[Susan Hayes (SH), Giles Perry (GP), Barbara Riley (BR), Ebher Rossi (ER)]

Enacted Legislation

No Tax on Gas Cities, S.L. 1998-22 (SB 1327). See **TAXATION.**

Outdoor Advertising Just Compensation Sunset Extended, S.L. 1998-23, Sec. 7 (SB 620, Sec. 7). See **TRANSPORTATION.**

Local Reg. Adult Entertainment, S.L. 1998-46 (SB 452). See **CIVIL LAW AND PROCEDURE.**

Clarify Transit Authority Debt, S.L. 1998-70 (SB 1289). See **TRANSPORTATION.**

Local/State Purchase of Service, S.L. 1998-71 (HB 1522). See **EMPLOYMENT.**

Installment Purchase/Sewer District, S.L. 1998-117 (SB 245). See **TAXATION.**

Electronic Commerce Act, S.L. 1998-127 (HB 1356). See **STATE GOVERNMENT.**

Bonds/Critical Infrastructure Needs, S.L. 1998-132 (SB 1354). See **TAXATION.**

Reg. Of Deeds Supp. Pension Changes, S.L. 1998-147, (SB 1407). See **EMPLOYMENT.**

Annexation and Incorporation Revision, S.L. 1998-150 (HB 1361), as amended by S.L. 1998-217, Sec. 66 (SB 1279, Sec. 66) makes extensive changes to the State's annexation laws. Section 1 requires the property tax assessor to notify the city of property annexed subject to loss of farm use value. Section 2 changes the criteria to be considered by the Joint Legislative Commission on Municipal Incorporation (Commission) to allow the Commission to make a positive recommendation on an incorporation within specified distances of existing municipalities, if those municipalities express their approval of the incorporation. Section 3 adds criteria to be considered by the Commission. In order to grant a positive recommendation, the area to be incorporated must meet the same development standards as provided in the annexation statutes, and the proposed municipality must plan to offer at least two of seven listed services. Section 4 amends the prerequisites to annexation for municipalities of less than 5,000 to allow maintenance of septic systems in lieu of sewer service, if sewer service could not be provided economically, and to require a statement of the effect of the annexation on city finances and services. Section 5, applicable to municipalities under 5,000, clarifies that the current limitation on changes to municipal water and sewer financial polices only applies for the purposes of extensions required under G.S. 160A-35 for newly annexed

areas. Section 6 amends the statute regarding the character of the area to be annexed by a municipality of less than 5,000. This section: requires that the determination of "developed for urban purposes" must be made by the time of the approval of the annexation report; forbids the use of streets and rights-of-way to determine total acreage of the area developed for urban purposes; attempts to more clearly define commercial, industrial, institutional, and governmental use; authorizes annexation of single commercial, industrial, institutional, and governmental use tracts; and changes the restriction on which features may be used as municipal boundaries. Section 7 applies to municipalities under 5,000 and amends the current annexation procedure to require a public informational meeting prior to the public hearing; requires cities not to tax or provide services to any land in a proposed involuntary annexation that is under farm use value until the land loses that classification; requires a statement in the resolution of intent to annex of persons rights concerning farm-use property; and authorizes citizens of newly annexed areas to apply to the Local Government Commission for tax relief if the municipality does not provide promised police, fire, solid waste, or street maintenance services. Section 8, applicable to municipalities under 5,000, authorizes city-rural fire department agreements on valuations for assumed debt. Section 9, applicable to municipalities under 5,000, requires potential solid waste contractors that have previously expressed interest in contracting with a city to respond within 10 days of the city's request for information. Section 10 is applicable to municipalities of less than 5,000 and extends the time for appeal from 30 to 60 days following passage of an ordinance; extends from 5 to 10 days the time the petitioner has to serve the municipality; authorizes a court to declare the annexation ordinance null and void, if the court finds that it cannot be corrected on remand; and authorizes superior court approval of annexation dispute settlements. Section 11, applicable to municipalities under 5,000, requires land subdivision estimates used in an annexation to at least meet the minimum requirements of G.S. 160A-36. Section 12 is applicable to municipalities of 5,000 or more and requires that the opportunity to request water and sewer service be available until five days after the public hearing; amends the prerequisites to annexation to allow maintenance of septic systems in lieu of sewer service, if sewer service could not be provided economically; and requires a statement of the effect of the annexation on city finances and services. Section 13, applicable to municipalities of 5,000 or more, clarifies that the current limitation on changes to municipal water and sewer financial polices only applies for the purposes of extensions required under G.S. 160A-47 for newly annexed areas. Section 14 amends the statute setting out the character of the area to be annexed by a municipality of 5,000 or more. This section requires that the determination of "developed for urban purposes" under the statute must be made by the time of the approval of the annexation report; forbids the use of streets and rights-of-way to determine total acreage of the area developed for urban purposes; increases the required density under the "developed for urban purposes" test #1 from 2 to 2.3 persons per acre; reduces the required acreage for the lots and tracts under "developed for urban purposes" test #2 and #3 from 5 to 3 acres; attempts to more clearly define commercial, industrial, institutional, and governmental use; authorizes annexation of single commercial, industrial, institutional, and governmental use tracts; restricts "necessary land connections" to 25% of the area to be annexed; and changes the restriction of the features that may be used as municipal

boundaries. Section 15 is applicable to municipalities of 5,000 of more and amends the current annexation procedure to require a public informational meeting prior the public hearing requires notice of the opportunity to request water and sewer service be included in the notice of the public hearing; prohibits cities from taxing or providing services to any land in a proposed involuntary annexation if the land is under farm use value until the land loses that classification; requires a statement in the resolution of intent to annex of persons rights concerning farm-use property; authorizes citizens of newly annexed areas to apply to the Local Government Commission for tax relief if the municipality does not provide promised police, fire, solid waste, or street maintenance services; and changes, from 40 to 70 days, the minimum number of days between an annexation ordinance becomes effective, if there is a resolution of consideration. Section 16, applicable to municipalities of 5,000 or more, authorizes city-rural fire department agreements on valuations for assumed debt. Section 17 applies to municipalities of 5,000 or more and requires potential solid waste contractors that have previously expressed interest in contracting with the city to respond within 10 days of a city's request for information. Section 18 applies to municipalities of 5,000 and extends the time for appeal from 30 to 60 days following passage of an ordinance; extends from 5 to 10 days the time a petitioner has to serve the municipality; authorizes the court to declare an annexation ordinance null and void, if the court finds that it cannot be corrected on remand; and authorizes superior court approval of annexation dispute settlements. Section 19 is applicable to municipalities of 5,000 or more and requires population, area, and land subdivision estimates for areas to be annexed to at least meet the minimum requirements of G.S. 160A-48.

The act became effective November 1, 1998, and applies to annexations for which a resolution of intent is adopted on or after that date. Any incorporation petition submitted to the Joint Legislative Commission on Municipal Incorporation prior to the effective date may be amended to comply with the new criteria. (GP)

Floodplain Management, S.L. 1998-172 (HB 1260) amends G.S. 143-138, North Carolina State Building Code, to allow local governments to adopt floodplain management regulations. The regulations may address all types and uses of buildings or structures located in flood hazard areas and include provisions governing substantial improvements, damage, lowest floor elevation, protection of mechanical and electrical systems, and other measures deemed necessary considering the characteristics of its flood hazards and vulnerability. The act became effective October 2, 1998. (GP)

Conveyance of Surplus Autos, S.L. 1998-195 (SB 1202) amends G.S. 160A-279 which authorizes cities and counties to convey, by private sale, real and personal property to a public or private entity which carries out a public purpose and to which the city or county is authorized to appropriate funds. S.L. 1998-195 authorizes the conveyance, without compensation, of surplus automobiles to any public or private entity to which the unit of local government is authorized to appropriate funds. The vehicle must be conveyed by the public or private entity to Work First participants selected by the county department of social services. The public or private entity may require an appropriate security interest in the vehicle until the participant satisfactorily completes the Work First

program. The conveyance of the vehicle to the Work First participant may be without compensation. The participant may be required to pay for license, tag, and/or title. The act became effective October 24, 1998. (BR)

Allow Volunteer Fire Dept./Rescue EMS Grant Funds To Be Used to Pay Highway Use Tax on Equipment Purchases, S.L. 1998-212, Sec. 25 (SB 1366, Sec. 25) amends G.S. 58-87-1(a) and 58-87-5(a). This provision allows volunteer fire departments and volunteer rescue units to use funds awarded from the Volunteer Fire Department Fund and the Volunteer Rescue/EMS Fund to pay highway use taxes. This section became effective July 1, 1998. (ER)

Local Government Debt Changes, S.L. 1998-222, (SB 873). See. **TAXATION**.

PROPERTY

[Walker Reagan (WR), Steve Rose (SR)]

Enacted Legislation

Renunciation of Property and Fiduciary Powers, S.L. 1998-148 (HB 1342) amends Chapter 31B - Renunciation of Property and Renunciation of Fiduciary Powers Act. It clarifies that the Act applies to all renunciations of present and future interests, whether qualified or non-qualified for federal and State inheritance, estate or gift tax purposes, unless expressly otherwise provided in the instrument creating the interest. The act changes current law to avoid the necessity of a successor beneficiary under a will or trust having to wait until the death of a person who renounces an interest before realizing the benefits of the bequest, thereby cutting off the interest of unborn children of the renouncer.

The act amends the provision in the law that sets forth the capacities in which one may succeed to a property interest that may be renounced. This provision clarifies that the right to renounce and the procedure for doing so applies to all renunciations, whether qualified (a renunciation that is not treated as a taxable event of estate, inheritance and gift tax purposes) or nonqualified (one that does result in a taxable event). The act deletes the law that prevented a person who succeeded to a renounced interest from receiving a greater share than the renouncer would have received.

The act provides that in order to be a qualified disclaimer for tax purposes, the renouncing instrument must be filed within the time required by federal statute; or if there is no federal statute, no later than nine months after the date the transfer of the renounced interest to the renouncer was complete for tax purposes.

The act expands the provision that defines the effect of renunciation, to provide for a method of determining the time of devolution of the interest based on three alternative circumstances.

The act repeals subdivision (3) of G.S. 31B-4, which provides that acceptance of the property or interest or benefit is a bar to the right to renounce the property or interest.

The act amends G.S. 31B-4 to provide that although the right to renounce is not barred by acceptance, an acceptance of the property, interest, or benefit may preclude the renunciation from being a qualified renunciation for tax purposes.

The act became effective on September 18, 1998, and applies to renunciations executed on or after that date, whether qualified or nonqualified for tax purposes. The act does not apply to any renunciation of an interest in a testamentary or inter vivos trust executed before the effective date, unless the trustee executes and records an instrument evidencing the acceleration of possession and enjoyment of the renounced interest to persons in being at the time of the filing of the renunciation, within six months after the effective date of this act. The act does not remove the rights of a current beneficiary who has received an interest in a trust between the date of the filing of a renunciation and the date of the filing by a trustee under the preceding sentence. (WR)

North Carolina Planned Community Act, S.L. 1998-199 (SB 801), as amended by S.L. 1998-217, Sec. 52 (SB 1279, Sec. 52), creates a new Chapter 47E as the North Carolina Planned Community Act. This act, modeled after the North Carolina Condominium Act and the Uniform Planned Community Act, establishes a process and procedure for establishing and governing non-condominium planned communities, commonly called planned unit developments (PUD's). The act does not apply to groups of 20 or fewer lots or to subdivisions where there are no common areas. The act applies to residential development, and may apply to non-residential development when elected by the developer. Any planned community created prior to January 1, 1999 may come under the act by an affirmative vote of 67% of the votes in the association.

The act sets out the procedures for creating, altering, and terminating planned communities. At least 67% of the votes in the association are required to amend a declaration, but at least 80% of the votes in the association are required to terminate such a declaration. The act also provides for the merger and consolidation of two or more planned communities.

The act also sets out the procedures for managing the planned community. All planned communities are to be governed by a nonprofit corporation incorporated no later than the time the first lot in the planned community is conveyed. The act also sets out the powers and procedures of the owners' association and its executive board including the power to adopt the budget of the planned community and to collect assessments to fund the budget. It also includes provisions that protect both lot owners and the owners' association by clarifying the duties of maintenance, upkeep, assessments, insurance, and liens. It provides that all or part of the common areas may be conveyed or encumbered upon a vote of at least 80% of the votes in the association.

The act becomes effective January 1, 1999, and applies to planned communities created on or after that date. Certain powers of owners' associations, the obligations to maintain common areas, the power to levy assessments for common expenses, and to collect those assessments by lien also apply to planned communities established prior to January 1, 1999. However, the attorneys fees provisions of the assessment collection statute only apply to causes of actions that arise on or after January 1, 1999. (WR)

Disclosure of Certain Crimes Not Required in Sale or Lease of Real Property, S.L. 1998-212, Sec. 17.16A (SB 1366, Sec. 17.16A) amends G.S. 39-50 and G.S. 42-14.2 by providing that it shall not be deemed a material fact, and therefore be required to be disclosed, that real property offered for sale or lease is or was occupied by a person required to register under Article 27A of Chapter 14 of the General Statutes, or that such a person resides near the property. Persons required to register under Article 27A of Chapter 14 are those who have committed certain offenses against minors or sexually violent offenses, and those who are deemed sexually violent predators. The amendments became effective December 1, 1998. (SR)

RESOLUTIONS

Joint Resolutions

Allow RNC Invitation Bill (Res. 34, HB 1281).

Honor Ollie Harris (Res. 35, SB 1224).

RNC Invitation (Res. 36, HB 1754).

Allow Memorial Resolutions (Res. 37, SB 1600).

Honor William C. Harris, Jr. (Res. 38, HB 1763).

Honor Bradford Ligon (Res. 39, HB 1234).

Ernest Bryan Messer Memorial (Res. 40, HB 1762).

Honoring Lillian E. Clemen (Res. 41, SB 1603).

Honor James Poyner (Res. 42, SB 1537).

Honor Archibald Davis (Res. 43, SB 1111).

Economos Memorial (Res. 44, HB 1765).

Jeff Hailen Enloe, Jr. Memorial (Res. 45, HB 1761).

Confirm William R. Pittman (Res. 46, SB 107).

STATE GOVERNMENT

[Barbara Riley (BR), Ebher Rossi (ER)]

Enacted Legislation

Building Code/Building Code Council

Building Code Council\Economic Impact, S.L. 1998-57 (HB 1334) amends G.S. 143-136(a), and 143-138(a). The act expands the membership of the Building Code Council ("Council") from 15 to 17 members. This increase adds a second registered architect to the Council and also adds a general contractor that specializes in "coastal residential construction."

The Council must request a fiscal note from the Office of State Management and Budget when it proposes changes to the building code that would increase the cost of residential construction by $80.00 or more per housing unit. The Council may not take final action on the proposed changes until at least 60 days after the preparation of the fiscal note.

The Council must reexamine wind-load resistance requirements as they apply to residential buildings. The changes in the Council size and the requirements regarding proposed changes became effective December 1, 1998. The remainder became effective July 24, 1998. (ER)

Floodplain Management, S.L. 1998-172 (HB 1260). See **LOCAL GOVERNMENT**.

Construction Law Changes, S.L. 1998-193 (SB 656) amends G.S. 143-128(e) of the public contract law to provide that when separate contracts are awarded and separate contractors are engaged on a project, the public body may provide in the contract for the use of alternative dispute resolution procedures for contract disputes. The act also amends the Overhead High Voltage Line Safety Act, Article 19A of Chapter 95 of the General Statutes. G.S. 95-229.6 is amended to provide that when work is done under contract with the government, the governmental entity is the "person responsible for the work done". G.S. 95-229.7 is amended to delete coverage of telephone, cable television, fire alarm, and low voltage lines when raising overhead lines or excavating around the support structures for overhead lines. G.S. 95-229.8(a) is also amended to clarify that the warning signs required by the subsection do not apply to items which by their size or configuration cannot accommodate the required sign. The act becomes effective January 1, 1999. (BR)

Courts

District Court Civil Case Management, S.L. 1998-212, Sec. 16.9 (SB 1366, Sec. 16.9) changes, from May 1, 1998, to April 1, 1999, the date when the Administrative Office of the Courts must report to the Chairs of the Senate and House Subcommittees on Justice

and Public Safety regarding the civil case management pilot programs. This section became effective July 1, 1998. (ER)

Authorize Additional Magistrates, S.L. 1998-212, Sec. 16.11 (SB 1366, Sec. 16.11) adds one additional magistrate to the maximum number of allowable magistrates in each of the following counties: Brunswick, Gaston, Mecklenburg, and Pamlico counties. This section became effective July 1, 1998. (ER)

Opening and Inventory of Decedent's Safe-Deposit Box, S.L. 1998-212, Sec. 16.14 (SB 1366, Sec. 16.14) changes the procedure for opening safe-deposit boxes that a decedent had "access" to. The section repeals the former procedure and does away with the absolute requirement that a clerk of superior court be present at the opening of a decedent's safe-deposit box and provide an inventory of its contents.

Under the new procedure, the clerk's presence is not required if the person requesting the opening of the safe-deposit box possesses a letter of authority signed by the clerk of superior court. However, the person possessing the letter of authority must provide an inventory of the safe-deposit box. The clerk of superior court must be present and must provide an inventory of the safe-deposit box contents if any other person requests the box be opened. This section becomes effective January 1, 1999, and applies to estates of decedents who die on or after that date. (ER)

Additional District Court Judges, S.L. 1998-212, Sec. 16.16 (SB 1366, Sec. 16.16), as amended by S.L. 1998-217, Sec. 67.3 (SB 1279, Sec. 67.3) adds one additional district court judge to Burke, Cumberland, Durham, Forsyth, Harnett, Henderson, Mecklenburg, Montgomery, Nash, Pitt, Rowan, Sampson, and Wake counties. The Governor shall appoint the judges no later than June 30, 1999. The judges' successors shall be elected in the 2002 election. If the districts are not subject to section 5 of the Voting Rights Act of 1965, the new judgeships became effective December 15, 1998. Those judgeships in those districts subject to the Voting Rights Act became effective December 15, 1998 or 15 days after approval under the Voting Rights Act. (ER)

Establish Pilot Program of Settlement Procedures in District Court Actions Involving Family Issues, S.L. 1998-212, Sec. 16.19 (SB 1366, Sec. 16.19) allocates funds appropriated to the Judicial Department to establish of a pilot program on settlement procedures in District Court actions involving family issues. The section deletes language authorizing the Dispute Resolution Commission to design and coordinate the pilot program and authorizes the Supreme Court to adopt rules to implement the program. The Director of the Administrative Office of the Courts (AOC) is authorized to set a fee, not to exceed $200, for the certification and certification renewal of mediators in the program. The AOC also may require the chief District Court judge of participating districts to report statistical data concerning the program. The AOC is authorized to accept private funds to evaluate the pilot program and is required to report is findings to the Chair of the House and Senate Appropriations Committees and the Appropriations Subcommittees on Justice and Public Safety by April 1, 2001.

The funding provision of the section became effective July 1, 1998. The remainder of the section became effective October 1, 1998. See also "Studies" below. (BR)

Additional District Attorneys, S.L. 1998-212, Sec. 16.20 (SB 1366, Sec. 16.20) adds additional district attorneys as follows: one additional district attorney in the 13th prosecutorial district (Bladen, Brunswick, Columbus); two additional district attorneys in the 21st prosecutorial district (Forsyth); and one additional district attorney in the 30th prosecutorial district (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain). This section became effective December 1, 1998. (ER)

Additional Investigatorial Assistants, S.L. 1998-212, Sec. 16.21 (SB 1366, Sec. 16.21) creates an investigatorial assistant's position as follows: 13th prosecutorial district (Bladen, Brunswick, Columbus); and 19B prosecutorial district (Montgomery, Moore, and Randolph). This section became effective July 1, 1998. (ER)

Additional Special Superior Court Judge/Clarify Terms of Existing Special Superior Court Judges, S.L. 1998-212, Sec. 16.22 (SB 1366, Sec. 16.22) amends G.S. 7A-45.1 by providing that effective December 15, 1998, the Governor may appoint an additional "special" superior court judge to a five year term. This provision also removes the existing sunset provisions that apply to the term of office of existing "special" superior court judges and provides that these judges shall serve five-year terms. "Special" superior court judges do not have to comply with the residency requirements that are imposed on other superior court judges. (ER)

Reports on Vacant Positions, S.L. 1998-212, Sec. 16.23 (SB 1366, Sec. 16.23) provides that by February 1 of each year, the Departments of Correction, Justice, and Crime Control and Public Safety must report all positions that have been vacant for 12 months or more to the Chairs of the House and Senate Appropriations Committees and the House and Senate Appropriation Committees on Justice and Public Safety. This section became effective July 1, 1998. (ER)

Reconform the Mileage Reimbursement for Out-of-State Witnesses, S.L. 1998-212, Sec. 16.25 (SB 1366, Sec. 16.25) amends G.S. 7A-314(c) by providing that out-of-state witnesses who come to North Carolina to testify at a criminal trial or who are mandated to appear in North Carolina may be compensated at the same rate as State officers and employees. Out-of-state witnesses who are required to appear for more than one day will be reimbursed for their actual lodging and meal expenses up to the maximum amount authorized for State employees traveling within the State. This section became effective October 30, 1998, and applies to all out-of-state witness travel expenses incurred on or after that date. (ER)

Establish Public Settlement Reserve Fund/Require Attorney General Report of State Settlements and Court Orders, S.L. 1998-212, Sec. 18.7 (SB 1366, Sec. 18.7) establishes the "Public Settlement Reserve Fund" as a restricted reserve in the General

Fund and directs the Attorney General to report to the Joint Legislative Commission of Government Operations and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety regarding payments deposited in the fund due to executed settlements, final orders, or judgments. The Attorney General must report the terms and conditions of the payment or order and also must submit a written report to the Fiscal Research Division of the General Assembly. This section applies to settlement agreements or final orders or judgments of the court entered into on or after November 15, 1998. (ER)

Increase Facilities Fees in the General Court of Justice, S.L. 1998-212, Sec. 29A.12 (SB 1366, Sec. 29A.12) amends G.S. 7A-304(a), 305(a), 306(a), 307(a), and 311(a) by increasing the fees for "court rooms and related facilities" in the General Court of Justice.

This section becomes effective February 1, 1999, and applies to fees assessed or paid on or after that date. (ER)

Superior Court Judge/Dual Office Holding Technical Correction, S.L. 1998-217, Sec. 36 (SB 1279, Sec. 36). See **CONSTITUTION AND ELECTION LAWS.**

Departments, Agencies, Commissions, Boards

Indian Cultural Center Board, S.L. 1998-19 (HB 1505) provides that the funds appropriated for the North Carolina Indian Cultural Center in Robeson County may be used for the development of the Cultural Center. Any remaining funds shall revert June 30, 1999. The act also increases the size of the Board of the North Carolina Indian Cultural Center, Inc. from 15 to 16 members by adding a representative from the Indians of Person County. The act became effective June 30, 1998. (BR)

Local/State Purchase of Service, S.L. 1998-71 (HB 1522). See **EMPLOYMENT.**

Well Contractor Certification Extension, S.L. 1998-129 (SB 1269). See **ENVIRONMENT AND NATURAL RESOURCES.**

State Employee Workplace Harassment, S.L. 1998-135 (SB 78). See **EMPLOYMENT.**

Forester Registration, S.L. 1998-157 (HB 577). See **AGRICULTURE AND WILDLIFE.**

Restructure DOT Board, S.L. 1998-169 (HB 1304). See **TRANSPORTATION.**

State Personnel Commission Reorganized, S.L. 1998-181 (HB 1469) reorganizes the State Personnel Commission (Commission) and authorizes the Chair of the Commission (Chair) to appoint panels to hear and make recommendations to the Commission for final agency decisions.

The Commission is currently composed of seven members, all appointed by the Governor. S.L. 1998-181 increases the number of members and changes the composition as follows:

1. Two attorneys appointed by the General Assembly; one by the President Pro Tempore of the Senate, one by the Speaker of the House.
2. Two representatives of private industry with working knowledge or practical experience in human resources management appointed by the Governor.
3. Two State employees subject to the State Personnel Act serving in nonexempt positions appointed by the General Assembly. The Speaker shall recommend an employee with supervisory duties, the President Pro Tempore shall recommend a non-supervisory employee. The Speaker and the President Pro Tempore shall consider nominations submitted by the State Employees Association of North Carolina.
4. Two local government employees subject to the State Personnel Act appointed by the Governor on the recommendation of the North Carolina Association of County Commissioners. One local employee shall have supervisory duties and the other shall be non-supervisory.
5. One member of the general public appointed by the Governor.

The act authorizes the Commission to make final agency decisions in contested cases upon the recommendation of a panel of its members. The Chair shall appoint each four-member panel. The act prohibits members of the General Assembly from serving on the Commission, and provides that the terms of the current members of the Commission shall expire on March 30, 1999.

The act makes a number of changes to the State employee incentive bonus program. The determination of savings may be carried over for one year after implementation of the innovation if actual savings cannot be verified before the end of the fiscal year. The act amends the provisions for determining the distribution of savings from employee suggestions or innovations under G.S. 143-345.22(a). It provides that the distribution may be either according to the scale provided in the statute or according to the guidelines of the funding unit. It also alters the distribution of the 30% designated to a performance bonus reserve for employees of the unit of the suggestor or innovator. As amended, the 30% would go to all current employees as designated by the agency head of the employing unit. G.S. 143-345.23 is amended regarding the duties of the agency coordinator for the program and shifts responsibility to designate the agency evaluator from the State Coordinator for the project to the agency coordinator.

The section of the act setting forth the composition of the Commission becomes effective June 30, 1999. The Commission's authority to make final agency decisions in contested cases becomes effective after the appointments are made. The remainder of the act became effective October 13, 1998. (BR)

Hospital Facility Audited Cost Report Due Date, S.L. 1998-212, Sec. 12.1A (SB 1366, Sec. 12.1A) amends G.S. 131D-4.2 to provide that the annual report for combination facilities and free-standing adult care home facilities owned and operated by a hospital shall be due 15 days after the hospital's Medicare cost report is due. Those combination facilities not owned and operated by a hospital must file their annual report 15 days after

the nursing facility's Medicaid cost report is due. This section became effective July 1, 1998. (BR)

Modify Setoff Debt Collection Procedure, S.L. 1998-212, Sec. 12.3A (SB 1366, Sec. 12.3A) amends G.S. 105A-3(b) to shift the responsibility from the Attorney General to the claimant agency, for determining which debts owed claimant agencies should not be submitted for collection because the validity of the debt is in question, alternative means of collection are pending, or collection attempts would result in a loss of federal funds. This provision became effective October 30, 1998, and expires January 1, 2000. Beginning on January 1, 2000, agencies will have similar authority under G.S. 105A-3(6). Effective October 30, 1998, the State Controller, in consultation with the Attorney General, shall develop guidelines for State agencies to use in determining whether a debt should be submitted for collection. (BR)

North Carolina Board of Pharmacy/Waiver for Disasters and Emergencies/Rules Pertaining to Mail Delivery of Dispensed Legend Drugs, S.L. 1998-212, Sec. 12.3B (SB 1366, Sec. 12.3B) makes several amendments to the North Carolina Pharmacy Practice Act. G.S. 90-85.25 is amended to allow the Board of Pharmacy (Board) to waive the provisions of the Pharmacy Practice Act when the Governor has declared a disaster or state of emergency or when an event occurs for which a county or municipality has enacted an ordinance to deal with states of emergency, or to protect public health, safety or welfare. G.S. 90-85.21A is amended to prohibit the Board from adopting rules regarding out-of-state pharmacies that ship, mail, or otherwise deliver legend drugs that are more restrictive than the federal statutes or regulations governing the delivery of prescription medications by mail or common carrier. G.S. 90-85.32 is amended to prohibit the Board from adopting rules governing the filling, refilling and transfer of prescription drugs that are more restrictive than the federal statutes or regulations governing the delivery of prescription mediations by mail or common carrier.

This section became effective October 30, 1998.

Transfer of Charitable Solicitation Program to the Secretary of State, S.L. 1998-212, Sec. 12.14 (SB 1366, Sec. 12.14) transfers from the Department of Health and Human Services to the Secretary of State's office the powers, duties, and functions of the Charitable Solicitations Program. This section becomes effective January 1, 1999. (BR)

North Carolina Information Highway, S.L. 1998-212, Sec. 15.8 (SB 1366, Sec. 15.8) amends of S.L. 1997-443 to shift the funds appropriated for the operation of the Information Highway from the Office of the State Controller to the Department of Commerce. The Department of Commerce shall develop a Migration Plan for converting existing and proposed North Carolina Information Highway sites to the H320 international standard. The plan must be submitted by December 1, 1998, to the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

This section became effective July 1, 1998. (BR)

Budget Bill/Organizational Reports, S.L. 1998-212, Secs. 15.10, 15.11, 15.12, 15.13, 15.14, and 15.14B (SB 1366, Secs. 15.10, 15.11, 15.12, 15.13, 15.14, and 15.14B) direct a number of private entities to provide information on the expenditure of State funds. The sections apply respectively to the North Carolina Global Center; the North Carolina Institute of Minority Economic Development, Inc.; the Land Loss Prevention Project, Inc.; the North Carolina Coalition of Farm and Rural Families, Inc.; the Minority Support Center; and the World Trade Center of North Carolina. By January 15, 1999, each organization shall provide to the Joint Legislative Commission on Governmental Operations a report containing the following information: (1) State fiscal year 1997-1998 program activities, objectives, and accomplishments as well as itemized expenditures and fund sources; (2) planned activities and estimated itemized expenditures and fund sources for State fiscal year 1998-1999; and (3) actual results, itemized expenditures and fund sources through December 31, 1998. Each organization shall also provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of its issuance. These sections became effective July 1, 1998.

Center for Community Self-Help Funds, S.L. 1998-212, Sec. 15.16 (SB 1366, Sec. 15.16) directs that funds appropriated to the Department of Commerce for fiscal year 1998-1999 be allocated to the Center for Community Self-Help to further a statewide program of lending for home ownership. Audited financial statements shall be submitted by the Center to the State Auditor within 180 day of the close of the fiscal year and records pertaining to the use of State funds shall be made available to the Auditor upon request. Quarterly reports on the use of State funds are to be made to the Auditor and a written report shall be made to the General Assembly by May 1 of each year for the next three years. Quarterly reports also shall be made to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Department of Commerce. The State Auditor may annually conduct an end of year audit of the revolving fund for economic development lending created by this appropriation. If the Center dissolves, the corporation shall transfer the remaining assets of the revolving fund to the State. This section became effective July 1, 1998. (BR)

Transfer Boxing Commission, S.L. 1998-212, Sec. 19.11 (SB 1366, Sec. 19.11) transfers the State Boxing Commission from the Department of the Secretary of State to the Department of Crime Control and Public Safety. This section became effective October 30, 1998. (BR)

Maritime Museum/Disposition of Objects, S.L. 1998-212, Sec. 21 (SB 1366, Sec. 21) recodifies former G.S. 106-22.2 as G.S. 143B-344.22 and amends the same to provide that the Department of Environment and Natural Resources may sell or exchange any object contained in the Museum of Natural Science's collection when it would be the museum's best interest to do so. This measure also amends Chapter 121 of the General Statutes by adding a new section, G.S. 121-7.1. This new section provides that, with the approval of the North Carolina Historical Society, the Department of Cultural Resources may sell, trade, or loan any artifact from the collection of the North Carolina Maritime

Museum if the sale, trade, or loan is not contrary to the artifact's terms of acquisition. Net proceeds from these transactions must be deposited in the State treasury and credited towards the museum's special fund for collections and exhibits improvements. This section became effective July 1, 1998. (ER)

Roanoke Island Commission Changes, S.L. 1998-212, Sec. 21.1 (SB 1366, Sec. 21.1) amends G.S. 143B-131.2(b) to allow the Roanoke Island Commission to transfer funds to the Friends of Elizabeth II, Inc., a private non-profit corporation. This measure further provides that the Roanoke Island Commission does not have to adhere to the State's purchase and contract provisions. This section became effective July 1, 1998. (ER)

Extend Statewide Data Elections Management System, S.L. 1998-212, Sec. 24 (SB 1366, Sec. 24). See **CONSTITUTION AND ELECTIONS.**

Pilot Program on Reporting on Collections of Bad Debts by State Agencies, S.L. 1998-212, Sec. 26 (SB 1366, Sec. 26) requires the Office of State Controller to set procedures so that health care institutions that are under or affiliated with the Department of Health and Human Services or The University of North Carolina must report bad debts to the Controller's Office. Agencies and institutions covered by these procedures are to report each bad debt, indicate the type of debt, the actions taken to collect on it, and the likelihood of collection. The Office of State Controller must report the results of this pilot project to the General Assembly no later than April 1, 1999. This section became effective July 1, 1998. (ER)

Relocate Global Transpark Authority, S.L. 1998-212, Sec. 29.12) directs the North Carolina Transpark Authority to relocate its administrative offices from Raleigh to the site of the Transpark facility in Kinston. This section became effective July 1, 1998. (ER)

Secretary of State Fees, S.L. 1998-212, Sec. 29A.9 (SB 1366, Sec. 29A.9) amends various provisions of the General Statutes pertaining to fees that may be charged by the Secretary of State's Office. This section becomes effective January 1, 1999. (BR)

Land Surveyor Registration Qualifications, S.L. 1998-217, Sec. 41 (SB 1279, Sec. 41) amends the qualification requirements for Land Surveyors. Applicants for examination may be qualified by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors upon graduation from high school and five years of progressive practice experience, four of which must be under a practicing licensed land surveyor. The act became effective October 31, 1998. (BR)

Cosmetologists, S.L. 1998-230 (SB 916) repeals Chapter 88 and adds Chapter 88B that creates the North Carolina Board of Cosmetic Art Examiners (Board). The six member Board regulates cosmetic art which is defined as: the use of cosmetic chemicals; the cutting, coloring, cleansing, and arranging of hair; the manicuring of nails; the use of electricity to stimulate hair growth; and the systematic messaging of the face, scalp, neck, shoulders, hands and feet. The Board is charged with: examining and determining

qualifications for licensure; licensing cosmetologists, apprentices, estheticians (skin care professionals), manicurists, cosmetology teachers, cosmetic art shops, and cosmetic art schools; conducting investigations into alleged violations of the act; and inspecting cosmetic art shops and schools.

The act also amends Chapter 90 by adding a new Article 36, which regulates massage and bodywork therapy. The act defines massage and bodywork therapy as: systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes that may include pressure, friction, stroking, rocking, kneading, percussion, and stretching the external application of water, heat, cold, lubricants, and other topical preparations, and the use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.

Persons licensed, certified, or registered under other North Carolina laws are exempted from the act provided they perform services within their authorized scope of practice. Also exempted are persons giving massage or bodywork to members of their own family, as well as practice movement educators such as yoga teachers, dance teachers, personal trainers, and martial arts instructors. The act does not apply to techniques that are "specifically intended to affect the human energy field."

The act also creates the North Carolina Board of Massage and Bodywork Therapy. This seven member board is charged with: evaluating the qualifications of applicants for licensure; licensing massage and bodywork therapists; establishing rules for the approval of massage and bodywork schools; maintaining a list approved schools; and conducting administrative hearings in contested cases.

The portions of the act relating to cosmetic art generally became effective November 1, 1998. The portion of the act that addresses the qualifications for licensing manicurists became effective December 1, 1998. The portions of the act dealing with massage and bodywork generally became effective November 1, 1998. The enforcement and injunctive relief provisions relating to Chapter 90 become effective July 1, 1999. (ER)

Purchase and Contract/Construction

Department of Administration Certification, S.L. 1998-45 (SB 1093) amends G.S. 143-6 and 143-341. The act requires the Department of Administration (DOA) to certify the feasibility of State construction projects involving requests for appropriations of $100,000 or more. A project is "feasible" if it is sufficiently defined in overall scope, building program, site development, budgeting, and scheduling so that the DOA can certify that the project may be completed with the requested funds. This act became effective July 15, 1998. (ER).

Electronic Commerce Act, S.L. 1998-127 (HB 1356) allows government agencies (State and local) to elect to transact business electronically under certain specified procedures. Agencies may accept filings, contracts, and other legally operative documents by computer as well as approved "electronic signatures". An electronic signature under this act is as legally binding as a manual signature. In order to be valid, an electronic

signature must be certified as authentic by a certification authority licensed by the Secretary of State. The certification authority certifies that the electronic signature belongs to the signer and that the document it is associated with is the same document transmitted by the signer. The Secretary of State shall adopt rules governing the licensing of certification authorities and the validation of electronic signatures. The act does not allow the electronic filing of notarized documents or documents that are parts of a court proceeding. While the act does not give legal sanction to electronic signatures on documents between private parties, it also does not apply to situations where electronic signatures are otherwise allowed by law. The act allows for both civil penalties against certification authorities that violate the act or the rules adopted under the act, and criminal penalties for violation of the act, and rules adopted under the act where there is an intent to defraud. The act becomes effective January 1, 1999. (WR)

Best Value Information Technology Procurements, S.L. 1998-189 (HB 1357) adds a new section to Chapter 143 requiring State agencies use the "Best Value" procurement method when acquiring information technology. "Best Value" procurement means the selection of a contractor based upon which proposal offers the best trade-off between price and performance where quality is a key performance factor. Provisions are also made for "Solution-Based Solicitation" and "Government-Vendor Partnerships". Solution-based solicitations are those solicitations in which requirements are stated in terms of how the product or service should accomplish its objectives rather than in terms of the technical design. Government-Vendor Partnerships are mutually beneficial contractual relationships between State government and a contractor. The Division of Purchase and Contract (Division) shall develop and implement by December 31, 1998, policies and procedures to ensure the use of Best Value procurement as well as Solution-based Procurement and Government-Vendor Partnership. The Division, along with the Information Technology Services of the Department of Commerce, shall develop policies, procedures, and programs to ensure that Division personnel receive high-quality training in the principles of Best Value procurement, Solution-based procurement, Government-Vendor Partnership, contract administration, and project management. The Division and Information Technology Services shall report to the Technology Committee of the House and its equivalent in the Senate on the results of the implementation of the act at its first meeting during the 1999 session. G.S. 143-135.9 became effective December 1, 1998. The balance of the act became effective October 21, 1998. (BR)

Procurement Card Pilot Program, S.L. 1998-212, Sec. 20.3 (SB 1366, Sec. 20.3) directs the Secretary of Administration to designate up to 15 government entities to participate in a procurement card pilot program. Entities participating in this program will use procurement cards to purchase supplies and equipment. This measure also requires the Division of Purchase and Contract and the State Controller to report to the Joint Legislative Commission on Governmental Operations and the Joint Appropriations Subcommittee on General Government on February 1, 1999, regarding this pilot program. This section became effective July 1, 1998 but does not affect contracts for procurement cards entered into prior to March 31, 1997. (ER)

Office of State Budget and Management

Federal Funds Clearly Shown, S.L. 1998-212, Sec. 7.2 (SB 1366, Sec. 7.2) amends the Executive Budget Act, in particular G.S. 143-16.1(a), to require that each budget category show the total of received and anticipated State and federal funds. A description of the purposes for which the federal funds will be used at the program level shall be included. Expenditures for the prior and anticipated fiscal years shall be reported by objects of expenditure, by purpose, and shall be identified by each federal grant. This section became effective July 1, 1998. (BR)

Juvenile Justice Reserves, S.L. 1998-212, Sec. 8.1 (SB 1366, Sec. 8.1) establishes the Juvenile Justice Reserve Fund (Fund) in the Office of State Budget and Management. The Fund shall be used to implement the recommendations of the Governor's Commission on Juvenile Crime and Justice. By May 1, 1999, the Office of Juvenile Justice must provide the Joint Legislative Commission on Governmental Operations (Gov Ops) a list of recipients of the grants awarded from the Fund. The Department of Health and Human Services or the Office of Juvenile Justice must report to Gov Ops prior to finalizing site selection for training school beds and detention beds authorized pursuant to this section. The Office of the Governor, in consultation with the Administrative Office of the Courts, the Division of Youth Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services shall study the need for one or more residential treatment programs for juveniles adjudicated delinquent for an offense containing an element of inappropriate sexual conduct. The Office of the Governor shall report to the House and Senate Appropriations Committee on its findings and recommendations, including proposed legislation, by April 1, 1999. This section became effective July 1, 1998. (BR)

Miscellaneous

Year 2000 Emergency Appropriations, S.L. 1998-9 (SB 1193) makes emergency appropriations to cover the costs of year 2000 conversions. It also requires the Department of Commerce to make quarterly reports to the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources regarding the status of year 2000 conversion; expenditure of funds from the Year 2000 Reserve Fund; and timelines and cost projections for full implementation of the Year 2000 conversion.
This act became effective June 16, 1998. (ER)

Increase Autopsy Fee, S.L. 1998-212, Sec. 29A.10 (SB 1366, Sec. 29A.10) amends G.S. 130A-389(a) by raising the autopsy fee that the State or counties must pay from $400.00 to $1,000. This section becomes effective January 1, 1999, and applies to autopsies or other studies performed on or after that date. (ER)

NCSU Centennial Campus, S.L. 1998-159 (HB 1737). See **EDUCATION**.

Changes to the Notary Public Act, S.L. 1998-228 (SB 1552) amends the Notary Public Act, changes the law governing the recordation of certain maps, gives the Secretary of State (Secretary) the authority to authenticate documents, and provides a curative provision allowing certain corporations and limited liability companies ("LLCs") to file annual reports with the Secretary to avoid administrative dissolution if they comply with certain requirements.

Changes to the Notary Public Act. This act makes several changes to Chapter 10A, the Notary Public Act. The amendments provide that: (i) an underlying purpose of the act is to prevent fraud and forgery; (ii) the Secretary may refuse to issue or reissue a notary commission to an applicant who has been convicted of a felony, but has not had their rights restored; (iii) effective January 1, 1999, instructors who are teaching a notary public course must pay a $50.00 fee; (iv) effective November 6, 1998 the fee charged by notaries may be $3.00 per signature for acknowledgments and verifications, and $3.00 per person for oaths and affirmations.

Effective November 6, 1998, this act also makes several changes regarding the Notary Public Act's *ex officio* provisions.

- ***Assistant & Deputy Clerks of Court*** - may now only notarize oaths and affirmations and verifications or proofs in their respective counties by virtue of their offices under the seals of their respective courts. If they wish to be able to perform other notarial acts under the seal of their respective courts, they must complete the same course of study that is required of other notaries public.
- ***Registers of Deeds*** - may now act as notaries public in their respective counties and certify their notarial acts only under the seals of their respective offices.
- ***Assistant & Deputy Registers of Deeds*** - may only notarize oaths and affirmations and verifications or proofs in their respective counties by virtue of their offices under the seals of their respective offices. If they wish to be able to perform other notarial acts under the seal of their respective offices, they must complete the same course of study that is required of other notaries public.

The act also validates certain acts performed by notaries prior to October 1, 1998. Among the acts, or documents, that are validated are:

- Acknowledgments taken, and instruments notarized, by a person whose notary commission had expired.
- All deeds of trust in which the notary was named in the document as a trustee.
- All documents bearing notarial seals that correctly, or incorrectly, stated the expiration date of the notary's commission.
- All documents bearing notarial seals with an incorrect spelling of the notary's name, or typed, printed, drawn, or handwritten material added to the seal.
- All documents bearing notarial seals that fail to contain the words "North Carolina," the abbreviation "NC," or are otherwise correct except that they contain abbreviations for states other than North Carolina.

The above validations became effective October 1, 1998.

Recordation of Maps. Effective December 1, 1998, maps attached to deeds or other instruments that are submitted for recording cannot be larger than 8½" x 14." Maps

must contain the original signature of a registered land surveyor and the surveyor's seal, or must be a copy of a map already on file in the public records. Maps that fail to meet these requirements may be submitted for recording for "illustrative purposes only" provided they are no larger than 8½" x 14"; and are conspicuously labeled to indicate that the map is not a certified survey and has not been reviewed by a local government for compliance with applicable regulations.

The act also exempts certain maps from review by a plat Review Officer including municipal annexation and boundary maps; highway right-of-way maps; roadway corridor maps; and maps attached to deeds for illustrative purposes.

Certificates of Authentication. This provision allows the Secretary or her designee to sign and issue certificates of authentication for documents executed in North Carolina so those documents may be recognized by foreign jurisdictions. These provisions became effective November 6, 1998.

Corporate & LLC Curative Provisions. This provision allows corporations and LLCs that have failed to file required annual reports with the Secretary to avoid administrative dissolution, or revocation of their certificate of authority, if they comply with certain requirements.

Corporations that have been delinquent in filing annual reports in one or more years from 1991 through 1997, may avoid administrative dissolution or revocation of their certificate of authority by completing the following requirements on or before November 30, 1999:

- Filing a current annual report;
- Paying the current annual report filing fee; and
- Paying the annual report filing fee for each delinquent annual report.

In order to be granted a certificate of reinstatement or new certificate of authority, a corporation must also comply with the statutory corporate name requirements found in G.S. 55-4-01 and file an application for reinstatement or files an application for a new certificate of authority. The application filing fee for these corporations is waived and any resulting certificates that are issued relate back to the date of revocation or dissolution.

LLCs that have been delinquent in filing annual reports in one or more years between 1993 and 1997, may avoid administrative dissolution by completing the following requirements on or before November 30, 1999:

- Filing a current annual report; and
- Paying the current annual report filing fee.

In order to be granted a certificate of reinstatement or new certificate of authority, the LLC must also comply with the statutory LLC name requirements found in G.S. 57C-2-30 and file an application for reinstatement. The application filing fee for these LLCs is waived and any resulting certificates that are issued relate back to the date of dissolution.

The "curative" provisions relating to corporations and LLCs became effective November 6, 1998, and expire December 1, 1999. (ER)

Studies

Independent Studies, Boards, Etc. Created, Continued or Changed

Indian Cultural Center Board, S.L. 1998-19 (HB 1505). See "Departments, Agencies, Commissions, Boards" above.

Clerks of Court on Commissions, S.L. 1998-170 (SB 1243) amends G.S. 164-37, 143B-273.6, and 143B-478. The act adds clerks of court to the membership of the North Carolina Sentencing and Policy Advisory Commission; the State Criminal Justice Partnership Advisory Board; and the Governor's Crime Commission.

The act became effective October 2, 1998. (ER)

State Personnel Commission Reorganized, S.L. 1998-181 (HB 1469). See "Departments, Agencies, Commission, Boards" above.

Cancer Control Advisory Committee/Additional Members, S.L. 1998-212, Sec. 12.48 (SB 1366, Sec. 12.48) amends G.S. 130A-33.50, effective December 1, 1998, to increase the membership on the Cancer Control Advisory Committee from 24 to 34 members. One additional member each, who shall be cancer survivors, shall be appointed by the President Pro Tempore of the Senate and by the Speaker of the House of Representatives. Of the Governor's appointees, the additional members shall include one member representing the American College of Surgeons, one representing the North Carolina Oncology Society, one representing the Association of North Carolina Cancer Registrars, one representing the Medical Directors of the North Carolina Association of Health Plans, and up to four additional members at large. (BR)

Competitive Government Initiative, S.L. 1998-212, Sec. 15.2C (SB 1366, Sec. 15.2C) adds a new Chapter 143C to the General Statutes entitled the North Carolina Government Competition Act of 1998. Section 15.2C creates a Competition Commission (Commission) to develop a framework within State government for identifying and analyzing privatization opportunities. The Commission, working with State agencies, must develop and recommend ways to encourage innovation and competition within State government. The Commission is administratively housed in the Department of Commerce.

The Commission's membership consists of three members appointed by the Governor, three members appointed by the Speaker of the House, and three members appointed by the President Pro Tempore of the Senate. In each group of appointees two shall be from the private sector and one shall be a State employee. One of the Governor's appointees must have large-scale purchasing experience

The Governor, the General Assembly, or the Commission may direct a State agency to perform a public-private competition analysis covering any service for which

the Commission has received from a private entity a qualifying unsolicited proposal for competition. The Commission may solicit competition proposals from private entities for the purpose of making cost-comparison analyses. State agencies may submit proposals to the Commission for cost comparison analyses.

The Office of State Budget and Management shall determine the amount of an existing appropriation that would no longer be required by a State agency as the result of savings realized through competition. The Office shall report annually, by February 1, to the Governor and the Joint Legislative Commission on Governmental Operations regarding the nature and amount of any savings. The Commission is required to report annually to the General Assembly. The act became effective July 1, 1998. (BR)

Establish Pilot Program of Settlement Procedures in District Court Actions Involving Family Issues, S.L. 1998-212, Sec. 16.19 (SB 1366, Sec. 16.19) expands the Dispute Resolution Commission from 9 to 14 members. The number of judges on the Commission is increased from two to five. Of the two practicing attorneys on the Commission, one must be a family law specialist. Members are no longer limited to no more than two consecutive terms. The provision regarding the family law specialist becomes effective July 1, 1999. The remainder became effective October 1, 1998.

Cosmetologists, S.L. 1998-230 (SB 916) creates two new boards; the North Carolina Board of Cosmetic Art Examiners; and the North Carolina Board of Massage and Bodywork Therapy. See summary of the act above.

Referrals to Existing Committees

Reorganization of Superior Court Divisions and Implementation of Circuit Court Pilots, S.L. 1998-212, Sec. 16.17A (SB 1366, Sec. 16.17A) requests that the Chief Justice of the Supreme Court convene a task force to study and make recommendations for:

1. reorganizing and expanding the Superior Court Division of the General Court of Justice in a way that does not divide any existing judicial districts and establishes between 8 and 12 judicial divisions; and
2. establishing pilot programs in up to three of the new judicial divisions that implement the "circuit courts" proposal suggested by the Commission for the Future of Justice and the Courts in North Carolina.

The Administrative Office of the Courts shall report to the General Assembly by March 1, 1999 regarding:

1. a specific recommendation for the most appropriate reorganization of the Superior Court Division;
2. population, case filings, travel distances, and any other factors that the task force considered in developing the recommendation;
3. any personnel and equipment needed to implement the circuit court pilot programs; and

4. any statutory changes or other legislation necessary to implement the pilot programs.

This section became effective July 1, 1998. (ER)

Study Emergency Management Positions, S.L. 1998-212, Sec. 19.7 (SB 1366, Sec. 19.7) directs the Joint Legislative Corrections and Crime Control Oversight Committee to study the State and local assistance funding eligibility criteria of the Division of Emergency Management that requires local governments have a full-time or part-time Emergency Program Manager. The Committee shall report its findings and recommendations to the 1999 General Assembly. This section became effective July 1, 1998. (BR)

Study Disaster Mitigation and Relief Funding, S.L. 1998-212, Sec. 19.9 (SB 1366, Sec. 19.9) directs the Department of Crime Control and Public Safety to study the feasibility and advisability of establishing a disaster mitigation and relief fund to provide disaster relief and recovery assistance to individuals and local governments affected by disasters. The Department shall report to the Joint Legislative Commission on Governmental Operations, the Chairs of the Appropriations Committees of the House and the Senate, the Chairs of the Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections and Crime Control Oversight Committee by March 1, 1999. This section became effective July 1, 1998. (BR)

Study Reclassification of State Museum Branch Directors, S.L. 1998-212, Sec. 21.5 (SB 1366, Sec. 21.5) directs the Office of State Personnel to study reclassifying the Branch Museum Administrators at the Mountain Gateway Museum, Museum of Albemarle, and the Museum of Cape Fear and report to the 1999 General Assembly. This section became effective July 1, 1998. (ER)

TAXATION

[Cindy Avrette (CA), Martha H. Harris (MH), Martha Walston (MW)]

No Tax on Gas Cities, S.L. 1998-22 (SB 1327) combines the current gross receipts and sales taxes on piped natural gas into a single, per therm excise tax and applies the tax uniformly to all sales of piped natural gas not exempt from the tax, effective July 1, 1999. The act also preserves the tax-exempt status for piped natural gas sold by the eight municipalities that operate their own piped gas system, by exempting them from the excise tax. The act is expected to reduce General Fund revenues by about $3.6 million a year.

There are three types of sellers of piped natural gas: a utility company, a gas marketer, and a gas city. A utility company is a utility regulated by the Utilities Commission. A gas marketer is a person who sells piped natural gas but is not a regulated utility. Gas marketers use the pipeline infrastructure of the utilities to deliver the gas they sell and they pay a transportation charge to the utilities for this service.[1] A gas city is a city that operates its own piped gas system. Eight cities in the State do this: Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

Before enactment of this act, two taxes applied to piped natural gas, franchise gross receipts tax and sales tax. The applicability and rate of each tax varied depending upon both the identity of the seller and the identity of the consumer. The franchise gross receipts tax was imposed at the rate of 3.22% of the gross receipts derived by a utility from the business of furnishing piped natural gas.[2] The tax applied only to the receipts of a regulated utility. This gross receipts tax on piped natural gas was enacted in the 1920s, when only regulated utilities could sell piped natural gas. Federal and State regulation of the piped natural gas industry has changed. Now, persons who are not utilities are allowed to sell piped natural gas. The gross receipts tax was not extended to these new sellers, however. Thus, gas marketers and gas cities were not subject to the tax, except to the extent the tax was imposed on the transportation charges paid by gas marketers or was embedded in the price paid for gas bought from a utility for resale to customers.

A special sales tax of 3% also applied to utilities' retail sales of piped natural gas. This tax was imposed in 1985, when the General Assembly split the existing 6% franchise gross receipts tax into a 3% sales tax and a 3.22% gross receipts tax, to make the sales tax portion deductible by individuals on their federal income tax returns. Although the federal tax law changes in 1986 removed this deduction, North Carolina did not change its taxation of utilities. Like the franchise gross receipts tax, this special sales

[1] The act directs the Utilities Commission to study the transportation rates utilities charge for delivering gas from the interstate pipeline.

[2] If the general corporate franchise tax under G.S. 105-122 exceeded the franchise gross receipts tax under G.S. 105-116, the company was required to pay the excess as well. The same structure is retained under the new piped natural gas tax, which combines both the gross receipts tax and the sales tax, by requiring piped natural gas companies to pay the general corporate franchise tax but allowing them a credit against the tax equal to 50% of the new piped natural gas tax.

tax did not apply to sales by gas marketers or gas cities because, by its terms, it was limited to sales by utilities.

The act eliminates bifurcated taxation of piped natural gas and applies a uniform excise tax to all piped natural gas consumed in this State. The excise tax exempts gas distributed to or by a gas city but does not otherwise distinguish between sales by utilities and sales by others. The tax is due monthly and is payable, generally, by the company that delivers the gas to the end-user. The tax rate is structured as a "declining block" that decreases as the amount of therms of piped gas consumed in a month increases.

A declining block tax rate is used to preserve the prior allocation of the tax burden among the three classes of piped gas customers: residential, business, and industrial. The sales and gross receipts taxes were a percentage of price; residential prices are the highest, business prices are in the middle, and industrial prices are the lowest. The combination of price and tax rate resulted in a higher effective rate of tax on residential customers and a lower rate on business and industrial customers. The new tax preserves this differential in the burden by applying a lower tax rate to those who use higher volumes

The only sales tax exemption applicable to piped natural gas under prior law was the "products of the mine" exemption. Under that exemption, the sale of piped gas by the producer of the gas, in the producer's capacity as a producer, was exempt from sales and use tax. Few consumers of piped natural gas buy their gas directly from the producer. This act does not retain this exemption in the new excise tax imposed in lieu of the franchise gross receipts tax and sales tax.

Under prior law, a percentage of the franchise gross receipts tax on piped natural gas service provided inside municipalities was distributed to the municipalities. This act preserves the distribution by providing that 50% of the new excise tax on piped gas service provided within a municipality will be distributed to that municipality. To minimize the difference between the former distribution amounts and the new distribution amounts, the tax provides that the amount distributed to cities will be adjusted for the first year, fiscal year 1999-2000. Any distribution adjustments will be made within the monies distributed to the cities. No State money is involved. The act directs the Revenue Laws Study Committee to look at the distribution formula and recommend to the General Assembly any changes that it believes are necessary.

For several years before 1998, the Department of Revenue did not impose the general 4% State and 2% local sales and use tax on the sale of piped natural gas. However, upon reexamination of the law, the Department determined that piped natural gas is tangible personal property as that term is defined in the sales and use tax statutes and all sales of piped natural gas are, therefore, subject to tax. Based on this determination, all retail sales of piped natural gas would have become subject to the general sales and use tax effective July 1, 1998, if they had not been exempted by this act.

The sale of piped gas by a gas city or by a gas marketer would not have been exempt from sales and use tax making the retail sale of piped gas by these sellers subject to a 6% State and local sales and use tax unless a lower rate applied. The law provided a lower rate of 3% for all sales made by regulated utilities and a lower rate of 2.83% for sales made to farmers, manufacturers, and laundries. Piped natural gas taxed at the State rate of 3% or 2.83% was not subject to the 2% local sales and use tax. The use tax would

have applied to a person who purchased piped natural gas from a seller who was not required to collect North Carolina sales tax. (CA) (MH) (MW)

Amend White Goods Tax, S.L. 1998-24 (SB 124) reduces the white goods tax rate, delays the sunset of the tax, changes the formula for distributing the tax proceeds, clarifies the purposes for which counties may use the proceeds of the tax, and provides for detailed reporting on counties' white goods management programs, effective July 1, 1998. The act also provides that counties that have excess tax proceeds may not receive additional distributions until they have spent the excess tax proceeds, effective January 1, 1999. The act does not affect the General Fund.

The white goods tax was imposed effective January 1, 1994. The purpose of the tax is to provide a source of revenue for the proper disposal of discarded white goods. A white good is a domestic or commercial large appliance, such as a refrigerator, a water heater, an air conditioner unit, or a dishwasher.

The white goods tax was scheduled to sunset July 1, 1998. This act extends the sunset three years, to July 1, 2001. The tax is a flat rate charged on every new white good purchased in this State or brought into this State for storage or use. The former tax rates were $10.00 for white goods that contain chlorofluorocarbon refrigerants and $5.00 for white goods that do not contain chlorofluorocarbon refrigerants[3]. This act reduces the tax to $3.00 per white good, whether or not it contains chlorofluorocarbon refrigerants.[4] The reduction of the tax rate will reduce revenues by about one-half.

Under prior law, the tax proceeds were distributed as follows: 5% to the Solid Waste Management Trust Fund[5], 20% to the White Goods Management Account[6], and 75% to counties on a per capita basis. This act changes the formula so that 8% of the tax proceeds will be distributed to the Solid Waste Management Trust Fund and 72% will be distributed to counties. The 20% allocation to the White Goods Management Account does not change.

Counties may use the white goods tax proceeds only for the management of discarded white goods. This act clarifies that expenditures of the tax proceeds must be related directly to the management of discarded white goods. It also specifies that authorized uses include capital improvements for infrastructure to manage discarded white goods, operating costs associated with managing discarded white goods, and cleanup of illegal disposal sites that consist of more than 50% discarded white goods. If an illegal disposal site consists of 50% or less discarded white goods, the tax proceeds may be used only to clean up the discarded white goods portion of the site.

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[3] Chlorofluorocarbon refrigerant is a type of gas that must be removed from a white good under federal law.

[4] Chlorofluorocarbon refrigerants were banned by the federal Environmental Protection Agency as of January 1, 1996.

[5] The money in this Fund is used to fund activities of the Department of Environment and Natural Resources (DENR) to promote waste reduction and recycling, to fund research on the solid waste stream in North Carolina, to fund activities related to the development of secondary materials markets, to fund demonstration projects, and to fund research by in-State colleges and universities.

[6] The money in this Account is used to make grants to local governmental units to assist them in managing discarded white goods.

The act limits the amount of surplus white goods disposal tax proceeds that a county may accumulate. Counties receive their distributions of white goods tax proceeds on a quarterly basis. Effective January 1, 1999, this act provides that if, at the end of a fiscal year, the county has a surplus of white goods tax proceeds that equals or exceeds 25% of the amount it was eligible to receive for the fiscal year, it may not receive additional distributions until its surplus falls below that level. The amount that would have been distributed to a county will instead be credited to the White Goods Management Account.

Counties submit an annual financial information report to the Local Government Commission. This act directs the Local Government Commission to require counties to include in the reports information about their management of white goods and their receipt and expenditure of white goods tax proceeds and related revenues. This requirement will make counties more accountable for their white goods management programs. The county finance officer based on an independent audit by a certified public accountant must certify the annual financial information report.

The Department of Environment and Natural Resources (DENR) reports annually to the Environmental Review Commission on the management of white goods. This act requires DENR to provide this report to the Revenue Laws Study Committee as well, and to include in the report a summary of the information about counties' white goods management programs provided in their counties' annual financial information reports to the Local Government Commission. (CA) (MH) (MW)

Economic Opportunity Act of 1998, S.L. 1998-55 (SB 1569), as amended by S.L. 1998-217, Sec. 11 (SB 1279, Sec. 11), is designed to promote economic development throughout the State in five ways:

1. It makes various amendments to the William S. Lee Quality Jobs and Business Expansion Act (Lee Act) to encourage large investments and correct technical problems in the Act.
2. It authorizes enhanced incentives for development zones, which are economically distressed areas located within municipalities.
3. It expands and modifies the Industrial Development Fund to provide financial support for projects in rural and less prosperous areas of the State.
4. It provides sales tax and property tax reductions for air couriers and a temporary bidding law exemption for specific projects of the Piedmont Triad Airport Authority to encourage development of air courier hubs.
5. It provides an investment tax credit for large and major recycling facilities that locate in Tier One counties to encourage development of a recycling industry in these counties. It also provides a refundable reinvestment credit and sales tax reductions for major recycling facilities.

The act will reduce General Fund revenues by $2.22 million in fiscal year 1998-99, $1.21 million in fiscal year 1999-2000, $6.81 million in fiscal year 2000-01, $12.97 million in fiscal year 2001-02, and $16.33 million in fiscal year 2002-03.

William S. Lee Act Modifications. Part I of the act makes a number of technical and substantive changes to the Lee Act. Unless a different date is given, these changes all become effective beginning with the 1999 tax year. The Lee Act, enacted by the General

Assembly in 1996, extended the jobs tax credit to all 100 counties, created a tax credit for worker training expenses, created a tax credit for increasing research activities, and created two tax credits for investing in machinery and equipment. In 1997, the General Assembly expanded the types of businesses eligible for the credits and created a tax credit for taxpayers that purchase or lease real property to be used as central administrative office property.

The act makes two changes to the central administrative office credit. First, it allows the credit to be taken against the insurance gross premiums tax. This change will permit insurance companies to qualify for the credit. Second, it clarifies that a central administrative office meets the requirements for creating new jobs if the jobs begin before the office property is in service, but are located at a temporary facility that the business occupies while waiting for its office property to be completed.

It also makes two changes to the credit for investing in machinery and equipment. First, it provides that for projects that span two tax years, the threshold applies only once to the investment. Otherwise, a project put in service over several months within a calendar year would receive more benefit than a project put in service over several months starting in one calendar year and ending in the next. This change went into effect beginning with the 1998 tax year. Second, it expands the credit to include machinery and equipment the taxpayer uses under an operating lease, but only if the machinery and equipment are part of a project valued at $150 million or more.

The act expands the credit for research and development. This credit piggybacks the federal credit, allowing a State credit equal to approximately ¼ of the federal credit as it relates to North Carolina activities. In 1997, Congress enacted an alternative credit for research and development. The act modifies the State credit to also allow a credit equal to approximately ¼ of the federal alternative credit as it relates to North Carolina activities.

The act simplifies the credit for worker training by replacing the credit measured by costs of training with a credit for wages paid to workers while they are being trained (not including on-the-job training). The credit is restricted to employees for whom the taxpayer qualifies for the jobs tax credit and employees being trained to operate machinery and equipment for which the taxpayer qualifies for the credit for investing in machinery and equipment. In order to qualify under former law for this credit, the taxpayer was required to get its planned training certified in advance by the Department of Community Colleges. This requirement was difficult both for taxpayers and for the Department of Community Colleges.

Finally, the act makes a number of administrative and technical changes to the Lee Act. First, it levies a $75.00 application fee on taxpayers who seek to qualify for a credit. The proceeds of the fee will help the Department of Commerce defray its costs in administering the credits. This fee becomes effective January 1, 1999. Second, the act extends, from five to 20 years, the credit carryforward period for investments over $150 million. Third, the act clarifies that credits are allowed only for new and expanding businesses, not for existing businesses that are sold to another taxpayer. An exception is made for a business that has closed, has filed a federally required notice that closure is imminent, or has been purchased in an employee buyout. Fourth, the act provides that if an industrial park is located in and owned by two counties who both contribute

significantly to its development, the industrial park as a whole is considered to have the tier designation of the lower-tiered county. This change promotes regional cooperation in industrial development and avoids an industrial zone that is split into two tier designations. Fifth, the act clarifies and renumbers the definitions of the different types of businesses that are eligible for credits and clarifies the method of calculating the investment tax credit and the business tax credit for property acquired by a capital lease.

State Development Zones. The act provides for the designation of economically distressed areas located within municipalities as State development zones and authorizes enhanced incentives for businesses that locate in a development zone, effective beginning with the 1999 tax year. A development zone is an area that (1) consists of one or more contiguous census tracts, block groups, or both; (2) has a population of 1,000 or more, at least 20% of whom are below the poverty level; and (3) is located at least partly in a municipality with a population over 5,000. If a business locates in a development zone, the wage standard it has to meet is the same as for Tier One counties - slightly lower than the standard for other counties. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

The Secretary of Commerce will designate development zones upon request of a taxpayer or a local government. The designation is effective for four years. The act provides that a development zone may qualify for priority in receiving community development block grants if the municipality's governing body adopts a strategy to improve the zone and establishes a committee to implement the strategy, in accordance with Department of Commerce guidelines. The Department of Commerce is required to report annually to the Department of Revenue and the General Assembly's Fiscal Research Division on the number of new jobs created within development zones and percentage of those jobs that were filled by residents of those development zones.

Infrastructure Funds. Part II of the act, effective July 1, 1998, states the intent of the General Assembly to appropriate funds to the Industrial Development Fund and the Utility Account of the Industrial Development Fund. The Governor's budget requested an appropriation of $18 million for the Fund and $14 million for the Utility Account. The Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 provides nonrecurring funding of $1.5 million to the Utility Account for economic development grants for water and sewer infrastructure. Under prior law, money in the Utility Account could be used in Tier One counties for construction or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or for existing, new, or proposed industrial buildings to be used in manufacturing and processing, warehousing and distribution, or data processing. The act expands the scope of the Utility Account to include Tier Two counties.

Under prior law, the Industrial Development Fund provided funding for manufacturing projects in Tier One, Two, and Three counties as well as in areas experiencing major economic dislocations. The funds could be used for equipment, capital improvements, and utility distribution lines. Projects in Tier Two and Three counties were required to match the State funds on a $1 to $3 basis. The funding was capped at $4,000 per job to be created and $400,000 per project. The act raises the per-

job cap to $5,000 and the per-project cap to $500,000. The act also expands the industries covered by both the Industrial Development Fund and the Utility Account to include all of the following: manufacturing, central administrative offices, air courier services, data processing, and warehousing and wholesale trade.

Finally, Part II of the act amends the statute to allow local governments receiving industrial development funds to use up to 2% of these funds to verify that the funds are used as required by law and otherwise to administer the grant or loan.

Air Courier Hubs. Part III of the act provides sales tax and property tax reductions for interstate air couriers in order to encourage the development of air courier hubs in North Carolina. An air courier is an air carrier that delivers individually addressed letters, parcels, and packages. Effective January 1, 2001, the act provides that sales to an interstate air courier of equipment for handling and storing materials at its hub will be subject to a reduced sales tax of 1%, capped at $80 per item. In addition, the act provides a sales tax exemption for sales to an interstate air courier of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at the air courier's hub in this State. Beginning with the 2001 property tax year, the act provides a property tax exemption for aircraft owned by an air courier and apportioned for property tax purposes to the courier's hub in this State. A hub is the place in this State where the air courier allocates for property tax purposes more than 60% of its North Carolina aircraft value and where its primary function is to receive packages from consolidation locations for sorting and distribution, rather than to consolidate packages for delivery to another airport for sorting and distribution.

Part III of the act also grants a bidding law exemption for the Piedmont Triad Airport Authority. The exemption is effective for a five-year period beginning January 1, 1999, and applies to design and construction of an air freight distribution facility on airport property, and related supplies, equipment, and services.

Recycling Facilities. Part IV of the act provides tax incentives for "large" and "major" recycling facilities located in Tier One counties at the time of initial construction. A recycling facility is a plant that manufactures products, most of which are made from at least 50% post-consumer waste material. The facility also includes related infrastructure, buildings, and equipment on land near (and in the same county as) the plant. A large recycling facility is one that will involve at least $150 million in new investment and 155 new jobs within a two-year period. A major recycling facility is one that will involve at least $300 million in new investment and 250 new jobs within a four-year period. In order to qualify for the applicable tax incentives, the owner of the facility must obtain certification from the Department of Commerce that it will meet the minimum investment and new job requirements. If the facility fails to meet either requirement within the applicable time period, it forfeits any tax benefit it received as a result of being certified.

Part IV of the act provides an investment tax credit for both large and major recycling facilities, effective beginning with the 1998 tax year. This investment tax credit is in lieu of the investment tax credit provided in the Lee Act. The recycling facility investment tax credit differs from the Lee Act credit in the following ways:

1. The Lee Act credit is equal to 7% of the cost of machinery and equipment, while the large recycling facility credit is equal to 20% of the cost and the major recycling facility credit is equal to 50% of the cost.

2. The credit is allowed at the time the owner of the recycling facility accrues expenses to purchase or lease machinery and equipment, rather than at the time machinery and equipment are placed in service, as under the Lee Act. If the facility fails to put the machinery and equipment in service within 30 months after taking the credit, the credit is forfeited and must be repaid.
3. The credit is allowed against both the corporate franchise tax and the corporate income tax. The Lee Act allows the credit against either but not both taxes.
4. The credit may equal 100% of the tax due from the owner of the facility. The Lee Act limits the credit to 50% of tax due.
5. The excess credit may be carried forward for 25 years. Under the Lee Act, as revised by this act, the relevant carryforward period would be 20 years.

Part IV of the act also provides to major recycling facilities locating in Tier One counties a refundable corporate income tax "credit for reinvestment", effective beginning with the 1998 tax year. The credit applies if the major recycling facility is not accessible by ocean barge or ship and incurs additional expenses due to transporting its materials and products by alternative modes of transportation. The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap is $640,000. In 2004, the cap levels off at $10.4 million a year. The act sunsets this reinvestment credit effective with the 2008 tax year. The act states the intent, however, to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

The reinvestment credit is refundable. That means that if the amount of credit exceeds the major recycling facility's tax liability after all other credits are subtracted, the balance is paid out in cash. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and forfeits any part of the credit it spends for another purpose.

Part IV of the act provides several sales and use tax reductions for major recycling facilities located in Tier One counties, effective beginning July 1, 1998. First, it provides that a reduced sales tax rate of 1%, capped at $80 per item, applies to cranes, foundations, transportation equipment, and material handling equipment used at the major recycling facility. These items would otherwise be subject to 4% State sales tax and 2% local sales tax. Second, it exempts from sales tax lubricants and other additives for vehicles and machinery used at the plant, and other materials and supplies (not including machinery and equipment) that are used or consumed directly in the manufacturing process. These items would also otherwise be subject to a combined State and local rate of 6%. Third, it

exempts from sales tax electricity purchased for use at the major recycling facility. This electricity would otherwise be subject to State sales tax at 3% or 2.83%. Fourth, it provides an annual sales tax refund for taxes a major recycling facility pays directly or indirectly on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility located in a Tier One county.

Finally, Part IV of the act provides for major recycling facilities an expanded version of the existing property tax exemption for property used for recycling. Under general law, to qualify for exemption, the property must be used exclusively for recycling and have recycling as its primary purpose. Effective beginning with the 1999-2000 property tax year, the act provides that, for major recycling facilities only, the property must be used predominantly for recycling and have recycling as a purpose. The Department of Environment and Natural Resources determined that these changes would be necessary to prevent a major recycling facility from being disqualified because it adds fillers or other materials to the post-consumer waste material when manufacturing products. (CA) (MH) (MW)

Delay Gaston Property Tax Interest, S.L. 1998-67 (SB 186) is a Statewide, public act that addresses a specific local problem concerning the payment of local property taxes for the 1997-98 fiscal year. The specific local problem is that after Gaston County conducted its octennial revaluation of property in 1997, 22,000 appeals were filed. This was many more appeals than had been anticipated. Although the statutory due date for the 1997 taxes was January 5, 1998, many of the appeals were still under consideration by the board of equalization and review at that time. Counties do not have the authority to release, refund, or compromise tax liabilities except as specifically provided by law.

This act allows the governing body of each affected taxing unit to adopt a resolution that waives interest on taxes paid between January 6, 1998, and March 7, 1998. The act is limited to taxing units whose tax receipts were not delivered to the tax collector before October 3, 1997. September 1 is the statutory due date for delivering tax receipts. The act applies to Gaston County and the units for which it collects taxes because the tax receipts were not delivered to the tax collector of Gaston County until October 3. Gaston County collects taxes for 13 of its 14 municipalities and for all of its 19 fire districts.

Generally, the law provides taxpayers two avenues to protest the amount of property tax due. A taxpayer may submit a written demand for a release of a tax claim any time prior to the payment of the tax. However, taxpayers that choose not to pay all or part of their taxes by the due date are subject to interest. Counties do not have the statutory authority to release taxpayers from the accruing interest, even if the taxpayers' appeals are under consideration. This is a rigid prohibition and failure to abide by it carries personal liability for each member of the board of commissioners. The rates of interest are 2% from January 6 to February 1 and ¾% for each month or part of a month after that. The second avenue to contest the payment of property tax is to pay the tax when due. If the tax is reduced on appeal, then the taxpayer receives a refund.

This act is a Statewide act rather than a local one because it must be Statewide to avoid conflicting with the prohibition in the North Carolina Constitution on certain local acts. Although the act is nominally Statewide, it applies only to Gaston County because it applies only to units whose tax receipts were not delivered to the tax collector before

October 3, 1997. Gaston County is the only taxing unit whose tax receipts were not delivered by that date. The General Assembly enacted a similar act for Beaufort County in 1995 and for Buncombe County in 1990. (CA) (MH) (MW)

Abolish Inheritance Tax Waivers, S.L. 1998-69 (SB 1229), as amended by S.L. 1998-212, Sec. 29A.2 (SB 1366, Sec. 29A.2), repeals the provisions of the former inheritance tax law (which was itself repealed by S.L. 1998-212, Sec. 29A.2) that required an inheritance tax waiver before the property of a decedent could be transferred. The estate tax, known as the pick-up tax, which replaced the former inheritance tax effective January 1, 1999, has no inheritance tax waiver requirement. This act does not affect the General Fund.

Former law required that when a person died, the Department of Revenue had to be notified of any accounts, stocks, and bonds in the name of the decedent and of the contents in the decedent's safe-deposit box. The Department would then issue inheritance tax waivers authorizing the bank or financial institution in possession of the decedent's property to transfer or release the property. Accounts held by the decedent and spouse with right of survivorship did not require a waiver before transfer.

This act repealed the inheritance tax waiver requirement and related penalties for failure to obtain waivers and forms required for the waivers, effective August 1, 1998. The inheritance tax itself was repealed effective January 1, 1999. This act was a recommendation of the Revenue Laws Study Committee. (CA) (MH) (MW)

Simplify Privilege License Tax, S.L. 1998-95 (SB 1252) incorporates two bills that the Revenue Laws Study Committee recommended to the 1998 General Assembly: Senate Bill 1252 and House Bill 1320. Senate Bill 1252 made numerous changes to the State privilege license taxes on amusements, professionals, installment paper dealers, banks, and alcoholic beverages. House Bill 1320 reduced the current 3% gross receipts tax on motion pictures to 1%.

Amusements. The former law imposed an annual $50 State privilege license tax and a 3% gross receipts tax on any form of entertainment not otherwise taxed or specifically exempted under Article 2 of Chapter 105 of the General Statutes. The State privilege license tax on amusements was treated as an advance payment of the corresponding gross receipts tax, and the license tax was applied as a credit upon the gross receipts tax. This act repeals the State privilege license taxes on amusements. Amusements will continue to pay a 3% gross receipts tax and any existing local license tax. This repeal simplifies the taxes assessed on amusements. It does not reduce revenues because the license tax was a credit against the gross receipts tax. This part of the act becomes effective July 1, 1999.

This act also reorganizes the list of amusements exempt from the tax so that all of the exemptions appear in one statute. The list includes those amusements that are currently exempt in Article 2, amusements that are listed as exempt in other sections of the statutes (the North Carolina Symphony Society and amusements organized under the Agriculture Chapter), and outdoor historical dramas that are described in Chapter 143 of the General Statutes and that have generally been exempt under the current definition for exemptions in G.S. 105-40. Exempt amusements set out in Article 2 are high school and

elementary school athletic contests, teen centers, dances and amusements promoted and managed by a corporation that operates a center for the performing and visual arts when the dance or amusement is held at the center, and amusements on the Cherokee Indian reservation where the entity providing the amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.

The act expands the exemption for elementary and secondary school dances and other amusements to include all such amusements. Former law exempted only the first $1,000 of gross receipts derived from dances and amusements actually promoted and managed by secondary schools when the proceeds were used exclusively for the school and not to defray expenses.

Motion Pictures. The act imposes a lower rate of tax on one form of amusements: motion picture shows. The act imposes a 1% gross receipts tax on this form of amusement, effective October 1, 1998, as opposed to the 3% gross receipts tax imposed on other forms of amusements. A 1% gross receipts tax on movie admissions is expected to generate $1.5 million in General Fund revenue in fiscal year 1998-99.

Prior to July 1, 1997, the State imposed a privilege tax on motion picture shows. Motion picture shows were not subject to the 3% gross receipts tax imposed on other forms of entertainment or amusement because it does not apply to amusements "otherwise taxed". During the Second Extra Session of the 1996 Session, the General Assembly repealed a number of State privilege license taxes, including the privilege taxes on motion picture shows. When the privilege license tax was repealed, motion picture shows fell into the category of amusements not otherwise taxed and, therefore, became subject to the 3% gross receipts tax. The Department of Revenue chose not to assess this tax in fiscal year 1997-98 until the General Assembly clarified that the tax should be collected. The Department's uncertainty arose from the absence of debate by the 1996 General Assembly on the issue of imposing a gross receipts tax on movies.

The Revenue Laws Study Committee considered this issue at length and heard from several interested parties. After much debate, the Committee recommended imposing a 1% gross receipts tax on movies, as opposed to the 3% gross receipts tax imposed on other, similar forms of entertainment and amusements.

The act clarifies that if a taxpayer offers an entertainment or amusement that includes both a motion picture and an entertainment or amusement that is subject to the 3% gross receipts tax, then the higher rate applies. The act also clarifies the exemption of motion pictures that are shown at a center for the performing and visual arts that is promoted and managed by an organization organized for religious, charitable, scientific, literary, or educational purposes. The showing of the motion picture show may not be the primary purpose of the center. North Carolina's policy of taxing movie concessions is consistent with other states and the District of Columbia.

Professionals. The act makes several clarifying and technical changes to the statewide privilege license tax on persons practicing certain professions or engaging in certain businesses. It also reorganizes the existing exemptions from the tax found throughout the statutes so that all exemptions will appear in one place. Lastly, it ends the practice of charging half the privilege license tax to an individual who applies after the midpoint of the fiscal year. This part of the act becomes effective July 1, 1999, and is expected to generate $14,375 in General Fund revenues in fiscal year 1999-2000.

The statute exempts persons age 75 and over and certain persons practicing the professional art of healing from the privilege license tax. The act adds to this list blind persons engaging in a trade or profession as a sole proprietor. The exemption for blind persons was formerly set out in another section of Chapter 105, which this act repeals.

The act repeals an exemption from occupational license taxes for persons serving in the armed forces and replaces it with a general provision in Chapter 93B of the General Statutes that allows an individual who is serving in the armed forces of the U.S. an extension of time to pay any license fee charged by an occupational licensing board if the individual qualifies for the extension of time to file a tax return under G.S. 105-249.2. This statute provides that the Secretary of Revenue may not assess interest or penalty against a taxpayer for any period that is disregarded under section 7508 of the Internal Revenue Code in determining the taxpayer's liability for a federal tax. This section of the Internal Revenue Code postpones tax liability for an individual serving in the armed forces, or serving in support of the armed forces, in an area designated by the President as a "combat zone". The period of service in such an area, plus the period of continuous qualified hospitalization attributable to an injury received while serving in that area, and the next 180 days thereafter, are disregarded in determining tax liability. The provision belongs in the Occupational Licensing Chapter, as opposed to the Chapter on Taxation, because it relates to occupational licensing, not to taxes.

Installment Paper Dealers. Installment paper dealers are persons engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt, when at the time or in connection with the execution of these instruments, a lien is reserved or taken on personal property located in the State to secure the payment of the obligations. These dealers paid an annual $100 license tax and a quarterly tax of .275% of the total face value of the obligations within the preceding quarterly calendar months. This act repeals the $100 license tax and increases the quarterly tax to .277% to offset the loss of revenue According to the Department of Revenue, this increase in rate will cover $112,811 of the $123,800 loss. This provision becomes effective July 1, 1999.

Banks. Under former law, banks were issued a privilege license each year and paid a tax at the rate of $30 for each $1,000,000, or fractional part thereof, of total assets held. These assets were determined by averaging the total assets shown in the four quarterly call reports of condition (consolidation domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities. This act eliminates the license and requires the banks to submit instead an annual report to the Department of Revenue showing the average of their total assets. The privilege tax must be paid with the report by July 1. The submission of a report in lieu of issuing an annual license will relieve the Department of having to issue licenses that vary yearly for each bank. The Department's computer system has had difficulty issuing licenses that vary each year, and this problem will become even more difficult with the year 2000 changeover. Also, a report will assist the Department in auditing banks.

The act also repeals the $100 annual privilege tax for banks that have been in operation for less than a year. New banks will be required instead to pay a tax on the average of the total assets determined by the number of days in operation. These changes

related to banks become effective July 1, 1999, and are expected to generate $1,400 in General Fund revenues.

Alcoholic Beverages. The act repeals annual privilege licenses on ABC permittees, raises the ABC permit fees by the corresponding amounts, and simplifies the tax rate on malt beverages. This part of the act becomes effective May 1, 1999, and is not expected to affect General Fund Revenues.

Under former law, a person had to obtain both a permit issued by the ABC Commission and a corresponding annual State license issued by the Department of Revenue to engage in a business involving alcoholic beverages. The person had to obtain the ABC permit before applying for the license. Upon payment of the State license tax, issuance of the license was mandatory if the applicant had the corresponding ABC permit. The information and qualifications required for the annual State license were the same as the information and qualifications required for the corresponding one-time ABC permit. The additional State license served no purpose other than to raise revenue. The act repeals these privilege licenses in order to eliminate the duplicate requirement of applying for a State privilege license and a corresponding ABC permit. The approximately $3.1 million revenue loss from the repeal of these privilege licenses is offset by an increase in the ABC permit fees set out in G.S. 18B-902(d), by repeal of the reduced fees for combined permits in G.S. 18B-902(e), and by an increase in the annual renewal fees for mixed beverage and guest room cabinet permits in G.S. 18B-903(b).

The act also simplifies the filing requirements for malt beverage taxpayers by setting a single rate of excise tax on malt beverages. Formerly, an excise tax of 48.387 cents per gallon was assessed against malt beverages in barrels holding at least 7¾ gallons and an excise tax of 53.376 cents per gallon was assessed against malt beverages in cans, bottles, barrels, or other containers holding less than 7¾ gallons. The act imposes an excise tax of 53.177 cents per gallon on the sale of any malt beverage, regardless of the container. Thus, the act simplifies the filing and reporting requirements for malt beverages by eliminating the requirement that vendors of these products specify the size and type of containers sold in their monthly reports to the Secretary. (CA) (MH) (MW)

Expand Amusement Tax Exemption, S.L. 1998-96 (SB 1001). The State levies a 3% gross receipts privilege license tax on anyone engaged in the business of offering amusements, athletic events, dances, and entertainment for which an admission is charged. This act creates two new, narrow exemptions from this privilege license tax for nonprofit arts festivals and community festivals that meet certain conditions. The Department of Revenue estimates that the revenue loss to the General Fund will be less than $25,000 a year.

Under the act, an arts festival is exempt from the privilege license tax if the person holding the festival meets all of the following conditions:

- The person holds no more than two festivals a year.
- Each of the festivals lasts no more than seven days.
- The arts festivals are held outdoors on public property, and involve a variety of exhibitions, entertainments, and activities.

- The person is exempt from State income tax.

Under the act, a community festival is exempt from the privilege license tax if the person holding the festival meets all of the following conditions:

- The person holds no more than one community festival a year.
- The festival lasts no more than 7 days.
- The festival involves a variety of exhibitions, entertainments, and activities, the majority of which are held outdoors and are open to the public.
- The person is exempt from State income tax.

This act became effective August 14, 1998.
(CA) (MH) (MW)

Revenue Laws Technical Changes, S.L. 1998-98 (SB 1226) makes numerous technical and clarifying changes to the revenue laws and related statutes. The Revenue Laws Study Committee recommended these changes to the 1998 General Assembly. The changes became effective August 6, 1998. The more notable changes are as follows:

1. Recodifies the corporate income and franchise taxes on savings institutions. These entities currently pay tax under Article 8D of Chapter 105 of the General Statutes. The taxes are identical to the income and franchise taxes paid by other corporations, with two adjustments. This section moves the taxation of savings institutions from Article 8D to the regular corporate income and franchise taxes in Articles 3 and 4. The two adjustments are retained. A general exemption in Article 8D has been transferred to the relevant privilege tax statutes: G.S. 105-83, G.S. 105-88, and G.S. 105-102.3.
2. Makes conforming changes to Subchapter S Corporation law to reflect the fact that trusts may now be shareholders.
3. Clarifies that withholding is not required on payments to tax-exempt entities.
4. Repeals a provision allowing refunds for motor fuel tax paid by marinas. Federal law no longer requires marinas to pay tax on motor fuel they purchase, so refunds are no longer necessary. It also removes references to sales tax applying to two types of motor fuel for which motor fuel tax refunds are allowed, because refunds are not made on these types of motor fuel (accidental mixes and fuel sold to marinas).
5. Modifies the definition of interstate carrier for purposes of sales tax refunds to reflect the deregulation of the industry. It also revises the property tax definition of a public service company to reflect deregulation of carriers and to conform to the Institute of Government interpretation that the regulation requirement applies only to the catch-all category of "any other company performing a public service."
6. Provides that a gift tax return is not required for gifts that are exempt from tax: gifts to charity and gifts between spouses. The 1997 federal tax act made a similar change to the federal gift tax, which formerly required returns for gifts to charity above $10,000.
7. Clarifies insurance company tax exemption language. G.S. 105-228.10 was enacted in 1945 to provide that local governments may not levy additional taxes on insurers and other entities subject to the gross premiums tax. This section rewrites the

statute to state that cities and counties are prohibited from levying a privilege license tax or a gross premiums tax on entities subject to gross premiums tax. The vague language of the statute is rewritten to clarify that insurance companies are not exempt from local sales taxes, local meals taxes, and other similar taxes that the General Assembly has authorized for local governments since this statute was enacted in 1945. Insurance companies currently pay these taxes and the terms of the tax statutes make it clear that they are not exempt.

8. Provides that tax information may be shared on a reciprocal basis with tax officials from jurisdictions outside the United States, as required by the International Fuel Tax Agreement.
9. Clarifies that taxpayers may rely upon all interpretations published by the Department of Revenue to the same extent as provided under current law for specified types of interpretations.
10. Removes unintentional ambiguities in the use value property tax law created when these statutes were rewritten and reorganized in 1995. The rewrite created potential, although strained, interpretations that deferred taxes were no longer required to be paid in some or in many cases where the law has always intended for them to be paid. These sections clarify that the law with respect to "rollback" of deferred taxes was not restricted by the 1995 rewrite. They also make further clarifying changes to the language. (CA) (MH) (MW)

Make Credits Constitutional, S.L. 1998-100 (HB 1422) amends two individual income tax credits to remove restrictions that prevent nonresidents from taking the credits. These restrictions are probably unconstitutional in light of a recent United States Supreme Court case. The act is effective for taxable years beginning on or after January 1, 1998. Its impact upon the General Fund is expected to be no more than $600,000 a year. This act is a recommendation of the Revenue Laws Study Committee.

North Carolina has two individual income tax credits that only residents may claim: the credit for construction of dwelling units for handicapped persons and the credit for child care and certain employment-related expenses. This act removes the restriction of the construction credit to residents, and modifies the child care credit so that a nonresident may take a proportional amount of the credit based on the percentage of his or her income that is taxable to North Carolina.

G.S. 105-151.1 grants an individual income tax credit for construction of multi-family rental units that conform to mandatory building code requirements related to accessibility by the handicapped. The dwelling units must be located in North Carolina. The credit was limited to North Carolina residents. The residence of the owner bears no relation to the benefit to this State of having handicapped-accessible dwellings constructed. Furthermore, the same credit is allowed under the corporate income tax law, but without any restriction based on the residence or domicile of the taxpayer that constructs the dwelling units.

G.S. 105-151.11 grants an individual income tax credit for childcare or similar expenses incurred so the taxpayer may be gainfully employed. The credit was not allowed to nonresidents. For nonresidents employed in North Carolina, the expenses would be directly related to the taxpayer's North Carolina income and thus there seems to

be a substantial reason that the credit should be allowed rather than disallowed. In any case, legislative history of this credit shows that the provision preventing nonresidents from claiming the credit was retained in the law due to an oversight in 1981, when it should have been repealed. (CA) (MH) (MW)

Sales Tax Changes, S.L. 1998-121 (HB 1367) makes three changes to the sales tax law, as recommended by the Revenue Laws Study Committee:

- It raises the sales tax quarterly threshold from $50 to $100, effective July 1, 1999.
- It repeals the annual wholesale sales tax license, effective July 1, 1998.
- It changes the name of the retail sales tax license to certificate of registration.

The act is expected to reduce General Fund revenues by about $1.3 million a year. It will also cause a one-time shift of about $2 million from the 1999-2000 fiscal year to the 2000-01 fiscal year.

Taxpayers that are consistently liable for at least $20,000 a month in State and local sales and use taxes must file sales and use tax returns and remit taxes on a semi-monthly basis. Under prior law, taxpayers that were liable for less than $50.00 a month in State and local sales and use taxes could file returns and remit the sales and use taxes owed on a quarterly basis. All other taxpayers would file returns and remit taxes on a monthly basis.

Section 1 increases the sales tax quarterly threshold from $50 to $100, effective July 1, 1999. This change means that approximately 10,000 taxpayers who are now filing monthly sales and use tax returns will be able to file quarterly returns. The change will reduce the number of returns currently being filed by one-third. The threshold was last increased in 1991 from $25 to $50. This change will mean that approximately $2 million that would have been collected in fiscal year 1999-2000 will not be collected until fiscal year 2000-01 because two months of collections are shifted into the 2000-01 fiscal year.

Under prior law, a wholesale merchant was required to obtain both a wholesale sales tax license and a certificate of registration, referred to in the statute as a retail sales tax license. Two licenses have the same form and request the same information. The only difference was that the wholesale sales tax license was an annual license that costs $25. The certificate of registration needs to be acquired only once and costs $15.

Section 2 repeals the wholesale sales tax license, effective July 1, 1998. The Department does not need the information from this license because the wholesale merchant has already provided the information on the certificate of registration.

Section 3 clarifies that both wholesale merchants and retailers must obtain a certificate of registration before beginning business. Although the statute refers to the certificate as a "retail sales tax license", it must be obtained by both wholesale merchants and retailers because a privilege tax is imposed on both of them under the sales and use tax article. The act changes the name of the license to a "certificate of registration" to more accurately reflect the nature of the document.

Unlike the annual wholesale sales tax license, the certificate of registration needs to be obtained only once. It is valid unless revoked because the retailer or wholesale merchant fails to comply with the sales and use tax law. The certificate becomes void if the retailer has no sales for 18 months. If the certificate is revoked or becomes void, the

retailer or wholesale merchant must register with the Department and obtain a new certificate of registration before engaging in business. (CA) (MH) (MW)

Bonds/Critical Infrastructure Needs, S.L. 1998-132 (SB 1354), as amended by S.L. 1998-212, Sec. 14.19 (SB 1366, Sec. 14.19), known as the "Clean Water and Natural Gas Critical Needs Bond Act of 1998", authorizes the issuance of general obligation bonds in the amount of $1 billion. The issuance of these bonds, $800 million for water and sewer bonds and $200 million for natural gas bonds, was approved by a majority of the voters in the November, 1998 election. The act also increases the maximum principal amount of revolving loans and grants that may be made to local government units from the funds in the Clean Water Revolving Loan and Grant Fund. The maximum principal amount of grants made to any one local government unit during any fiscal year is increased from $1 million to $3 million. Finally, the act establishes a 19-member State Infrastructure Council (Council) within the Department of Environment and Natural Resources (DENR). The purpose of the Council is to develop a State strategic plan that addresses the State's water supply and distribution and wastewater treatment needs.

Use of Clean Water Bond and note proceeds. The act provides for the issuance of $800 million of Clean Water Bonds. Public necessity and specific criteria listed in the act for various allocations of the Clean Water Bonds are the primary considerations in granting and loaning these proceeds. In addition, special emphasis is placed on the creation of efficient water supply and wastewater collection and disposal systems, sound fiscal policies, creative planning, efficient operation and management, development of a capital improvement plan, compliance with watershed protection requirements, and use of proceeds to address current critical infrastructure needs.[7] None of the Clean Water Bond proceeds may be used for a low-pressure pipe wastewater system or for construction of a new water and sewer line to provide water and sewer connection in a designated watershed area.[8]

$500 million of the proceeds of the Clean Water Bonds are to be issued as follows:

- $330 million is to be used by DENR to provide high-unit cost grants to local government units. These grants are for the purpose of paying the cost of water supply systems, wastewater collection systems and wastewater treatment works, water conservation projects, water reuse projects, and rural school water or wastewater projects. In order for a high-unit water supply or wastewater project to be eligible for a grant, the project must require estimated average household water and sewer user fees greater than 1 ½% of the median household income in the local government unit in which the project is located. S.L. 1998-212, enacted October 30, 1998 clarifies the statutory criteria used to determine eligibility of an applicant for a high-unit cost grant for a wastewater or water supply project. The amended definition clarifies that if an applicant is constructing its first utility or has only a

[7] These special emphases do not apply to the allocation of $35 million of Clean Water Bonds for State matching funds or the allocation of $20 million of Clean Water Bonds for economic development.

[8] These prohibitions on the use of Clean Water Bonds do not apply to the allocation of $35 million of Clean Water Bonds for State matching funds.

single utility and is upgrading that utility, then the applicant's eligibility is determined by comparing the project's debt service, operation, and maintenance costs to ¾% of the median household income in the local government unit. The requirement that a project's debt service, operation, and maintenance cost be compared to 1 ½% of the median household income applies only when the applicant has two utilities (water and sewer).

- $35 million is to be used by DENR to provide State matching funds for federal wastewater or water supply funds.
- $20 million is to be awarded and administered by the Department of Commerce for making grants to local government units to pay the cost of clean water projects in connection with the location of industry to, and expansion of industry in, the State. These grants may be made only for projects that are located in economically distressed counties, that will have a favorable impact on the State's clean water objectives, and that deal with manufacturing and warehousing and wholesale trade.
- $60 million is to be awarded and administered by the Rural Economic Development Center as supplemental and capacity grants to eligible local government units. Eligibility criteria include the requirement that an applicant be a rural county, a local government unit in a rural county, or a county applying for a grant on behalf of a rural school. Projects located within economically distressed counties receive priority. The county on a dollar-for-dollar basis must match a grant awarded to a rural county that is not an economically distressed county.
- $55 million is to used for grants to local government units that are unsewered communities, that have a population of 5,000 persons or less, and that have a median household income that does not exceed 90% of the national median household income. To be eligible for a grant, a local government unit must agree to adopt a fee schedule that reflects at least the average annual water and wastewater cost per household calculated at 1 ½% of the median household income in the unit's jurisdiction. S.L. 1998-212, enacted October 30, 1998, clarifies that a local government unit that is constructing its first utility or that has only a single utility and is upgrading that utility, is eligible for these grants if it agrees to adopt a fee schedule that reflects at least the average annual water or wastewater cost per household calculated at ¾% of the median household income in the applicant's jurisdiction. These grants are to be awarded and administered by the Rural Economic Development Center. The act defines unsewered communities as "lacking centralized publicly owned wastewater collection systems and wastewater treatment works."

The remaining $300 million of the $800 Clean Water Bonds is to be used to provide loans to local government units to pay for water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works. A county may also apply for a loan for one of these projects on behalf of a rural school located in the county. DENR shall set the priorities for the loans. DENR and the Local Government Commission determine the eligibility of local government units for these loans. Each loan applicant must demonstrate its financial

capacity to repay the loan and agree to adopt and effect a schedule of fees and charges that will provide for proper operation, maintenance, and administration of the projects.

Use of Natural Gas Bond and note proceeds. The act provides that $200 million of Natural Gas Bonds is to be used for providing grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities in unserved areas. The following 22 counties are currently unserved: Alleghany, Ashe, Camden, Carteret, Cherokee, Chowan, Clay, Currituck, Dare, Gates, Graham, Hyde, Jackson, Jones, Madison, Pamlico, Pasquotank, Pender, Perquimans, Swain, Tyrrell, and Washington.

Reports required. The entities making grants or loans under the act must file a yearly report with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Each report must show the allocation and making of loans or grants authorized by the act for the preceding fiscal year. Entities making the grants must also monitor compliance with the statutory goals for participation in projects by minority businesses and report to the General Assembly annually regarding minority business participation. (CA) (MH) (MW)

Poultry Composting Tax Credit, S.L. 1998-134 (HB 1617) removes the sunset from the individual income tax credit for constructing a poultry composting facility in this State for composting poultry carcasses resulting from commercial poultry operations. The credit would have expired in the 1998 tax year. The individual income tax credit was available only to individuals, shareholders in Subchapter S corporations, and other individual owners of pass-through entities. This act expands the credit to C corporations. The act will reduce General Fund revenues by approximately $30,000 a year.

The amount of the credit allowed is 25% of the installation, equipment, and materials costs of building the facility, not to exceed $1,000. The credit does not apply to costs paid with funds provided to the taxpayer by a State or federal agency. The amount of the credit allowed cannot exceed the amount of tax imposed for the taxable year and any unused credit may not be carried forward to succeeding taxable years.

A poultry composting facility is a structure or an enclosure in which whole, unprocessed poultry carcasses are decomposed by a natural process into an organic, biologically safe byproduct that can be used for plant food. Every person engaged in raising poultry for commercial purposes who has a flock of at least 200 fowl is required to dispose of poultry carcasses in a pit, an incinerator, or a poultry composting facility that has been approved by the Department of Agriculture. In the poultry business, the grower of a bird is often not the owner of the bird. The burden of disposing of poultry carcasses is usually on the grower of the bird. The purpose of the credit is to encourage people who raise turkeys, chickens, or other poultry to compost the dead poultry rather than burn it or put it in a pit. By composting the poultry carcasses, the by-product can be converted into a useful product. (CA) (MH) (MW)

Local Tax Information/Refunds, S.L. 1998-139 (HB 1489) makes three changes relating to local taxes. The changes, which became effective September 14, 1998, relate to sharing of certain tax information and to property taxation of motor vehicles. First, the

act authorizes the Department of Revenue (Department) and county tax officials to share information about the taxes paid on leased vehicles with each other and with a regional public transportation authority or a regional transportation authority. Second, it authorizes State tax officials to share information regarding sales and use taxes with city and county government representatives. Third, it also gives counties the specific authority to release or refund the taxes on a motor vehicle when the taxpayer moves out of state and surrenders his or her license plate. The Revenue Laws Study Committee recommended this last change.

Information sharing of taxes on leased vehicles by the Department of Revenue. The Department collects the alternate highway use tax, which is a gross receipts tax on vehicle rentals. Regional transit authorities are authorized to levy gross receipts taxes on vehicle rentals. The act provides an exception to G.S. 105-259, which prohibits the Department from revealing confidential tax information. The act authorizes the Department to provide regional transit authorities, on an annual basis, identifying information about the retailers from whom it collects the State vehicle rental tax. The compliance and audit information gathered by the Department will assist regional authorities in enforcing their local vehicle rental taxes.

In 1997, the General Assembly enacted S.L. 1997-417, which authorized a regional transit authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting passenger motor vehicles and motorcycles. The tax applies only to short-term rentals, i.e., rentals for a period of less than one year. The tax is collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13% if the authority levies the full 5%. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

A regional transit authority is a regional public transportation authority created under Article 26 of Chapter 160A of the General Statutes or a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes. The authority created under Article 26 is the Triangle Transit Authority for Wake, Durham, and Orange Counties. Article 27 authorizes the creation of a regional transit authority for the Triad region. The counties served by the Authority would be Forsyth, Guilford, Randolph, Davidson, and Alamance. The four major cities involved in the Authority's creation are Greensboro, High Point, Winston-Salem, and Burlington.

Information sharing of sales and use taxes by the Department of Revenue. The Department also collects sales and use taxes from retailers, including restaurants and other businesses that sell prepared food and beverages. Several local governments are authorized to levy local taxes on prepared food and beverages. They are Charlotte/Mecklenburg, Cumberland County, Dare County, Wake County, and the Town of Hillsborough. The act authorizes the Department to provide counties and cities, on an annual basis, identifying information about the retailers from whom it collects sales and use taxes who might be engaged in the business of selling prepared food and beverages. This sharing of information will assist local governments in enforcing their local taxes on prepared food and beverages.

Information sharing of taxes by counties and regional transit authorities. Some counties audit vehicle rental dealers for property tax purposes and audit retailers of prepared food and beverages for purposes of the local meals tax. G.S. 153A-148.1, however, prohibits counties from sharing tax information about a taxpayer's income or receipts. This information could assist regional transit authorities in enforcing their vehicle rental taxes and could assist the State in enforcing the sales and use tax it collects. The act adds two exceptions to the statute so that counties and regional transit authorities may exchange tax information about vehicle rental dealers with one another when the exchange will aid either agency in fulfilling its duties, and provide tax information to the Department when the information will help the Department in its duties.

Property Taxation of Motor Vehicles. Since 1993, counties have taxed motor vehicles that are registered with the Division of Motor Vehicles (DMV) on a revolving, year-round basis. If the taxes remain unpaid for more than four months after they become due, the county places a block on the vehicle's registration with DMV. This block provides an incentive for taxpayers to pay the taxes. The block has no impact on a taxpayer who has moved out of the State during the tax year. In most instances the taxpayer is willing to pay the taxes on the part of the tax year that the vehicle was registered in North Carolina but does not want to pay the entire year's taxes. In the past some counties have prorated the amount of taxes due in order to obtain part of the tax liability, although they did not have the statutory authority to do so. The act provides that authority, by requiring the partial release or refund of property taxes on a motor vehicle when the taxpayer surrenders the vehicle's registration plate to the DMV because the taxpayer has moved out of state and registered the vehicle in another jurisdiction. The taxpayer may apply for a release or refund of taxes on the vehicle for any full calendar months remaining in the vehicle's tax year after the date of surrender. (CA) (MH) (MW)

Motor Fuel Tax Changes, S.L. 1998-146 (SB 1230) makes changes in several different areas of the motor fuel tax laws. It clarifies the taxation of kerosene, provides automatic refunds to motor carriers, imposes a penalty for improper reporting, and makes several clarifying and conforming changes to the motor fuel tax laws.

As a means to address motor fuel tax evasion, the federal government in 1994 began requiring motor fuel to be dyed if it was non-tax-paid fuel. North Carolina passed a similar act in 1994. Under federal and State law, it is unlawful to use dyed diesel fuel in a vehicle used on the highway because the dye indicates that fuel taxes have not been paid on that fuel. Effective July 1, 1998, the federal government began requiring kerosene to be dyed. This act conforms North Carolina's law with the federal law by amending the definition of the term "diesel fuel" to include kerosene. This change makes it a State violation, as well as a federal violation, to use dyed kerosene for a highway use.

This change also means that undyed kerosene will be taxed at the rack. Prior to July 1, 1998, the taxation of kerosene occurred when it was blended with other fuel to be used for highway purposes. This part of the act applies to kerosene sold on or after July 1, 1998. To help the Department of Revenue (Department) track the path of kerosene that had been removed from the terminal transfer system prior to July 1, 1998, the act required retailers, distributors, importers, and suppliers who had kerosene on hand or in their

possession as of 12:01 a.m. on July 1, 1998, to inventory the kerosene and report the results of the inventory to the Secretary of Revenue by July 15, 1998.

The act makes conforming changes to the motor fuel tax laws to provide the proper exemptions from, and refunds of, the excise tax on motor fuels for undyed kerosene used for non-highway purposes. It adds diesel fuel that is kerosene and that is sold to an airport to the list of fuels exempt from the motor fuels tax. It provides that a distributor will be allowed to obtain a refund of the tax paid on kerosene when it is sold to an end user for heating if the kerosene is dispensed into the end user's storage facility that contains fuel used only for heating. It also provides that a distributor will be allowed to obtain a refund of the tax paid on the kerosene when it is sold to a retailer for non-highway use if the kerosene is dispensed into a storage facility marked for non-highway use and the storage facility is equipped with a dispensing device that is not suitable to fuel highway vehicles. The act clarifies that kerosene sold for a non-highway use is subject to sales tax.

Effective July 1, 1998, the act provides for an automatic refund to a motor carrier whose credit exceeds its tax liability. A carrier operating in this State is taxed on the amount of motor fuel the carrier used in the State and is entitled to a credit for the motor fuels tax it paid on purchases made in this State. Under former law, a carrier had two years to request a refund when its tax credits exceeded its tax liability. If the motor carrier failed to request a refund within two years of tax payment, then the Department kept the overpayment. From 1990 to 1996, the Department earned $6 million or approximately $83,300 per quarter from lapsed refunds. Since the complete implementation of the International Fuel Tax Agreement in 1996, motor carriers have been more aggressive in seeking refunds owed to them. Based on a review of the second quarter of 1997, the amount of lapsed refunds was down to $60,000. Under this act, carriers will automatically receive refunds and the Highway Fund will no longer receive $240,000 in unanticipated revenues from lapsed refunds each year.

Effective January 1, 1999, the act imposes a $250 penalty on a licensed distributor or licensed importer who deducts an exempt sale when paying the excise tax to a supplier and then fails to report the exempt sale when filing a reconciling return. The Department anticipates a revenue gain from this penalty, but it cannot estimate the amount.

The act also makes the following changes to the motor fuel tax laws. With the exception of the first change listed below, the changes became effective September 18, 1998:

- It expands the definition of "two-party exchange" to include sales between suppliers to address buy-sell agreements. This change is effective for transactions occurring on or after January 1, 1999.
- It requires a carrier who denies liability for a penalty to pay the penalty under protest and then apply to the Department for a hearing.
- It gives the Secretary of Revenue the authority to send a letter of release instead of returning a bond when a license holder files a bond or irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due. The Secretary already has this authority under G.S. 105-449.76 when a license is canceled.

- It creates a presumption that all fuel delivered to a storage facility marked for non-highway use was used for highway purposes and is therefore subject to tax if the Secretary determines that a bulk-end user or retailer used or sold any of the untaxed dyed diesel fuel from that storage facility to operate a highway vehicle. This presumption currently applies to alternative fuels in G.S. 105-449.138(b).
- It clarifies the due date for applications for refunds of the motor fuel tax.
- It requires an applicant for a license to engage in the alternative fuel business to be incorporated, organized, or formed in this State or authorized to transact business in this State. If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process in this State. An applicant for a license to engage in the motor fuel business must already meet this requirement.

(CA) (MH) (MW)

Wireless Telephone Service Act, S.L. 1998-158 (SB 1242). See **COMMERCIAL LAW.**

Nonresident Tax Collection, S.L. 1998-162 (HB 1318) limits the withholding requirement for payments to nonresident contractors so that it applies only to payments to contractors doing business as athletes and entertainers. It clarifies that radio programs, like television and film programs, are a form of entertainment for purposes of the withholding requirement. It also limits the requirement to payments to a nonresident contractor in excess of $1,500 a year. These changes become effective retroactively as of January 1, 1998. Originally, the withholding requirement also applied to construction-related trades. Although this act removes construction-related trades from the income tax withholding requirements, it does require occupational licensing boards for construction-related trades to cooperate with the Department of Revenue to assure that nonresidents pay delinquent taxes before being licensed to do business in this State. Most of these changes affecting occupational licensing become effective July 1, 1999. The changes made by this act are expected to reduce General Fund revenues by $7 million a year.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. To address this collection problem, the 1997 General Assembly enacted S.L. 1997-109 to require payers to withhold 4% from the compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina if the compensation exceeded $600 in the calendar year. The withholding requirement was phased in as follows. Beginning January 1, 1998, it applied to payments to individuals for any personal services and payments to entities for services relating to entertainment, athletic events, and construction. The withholding requirement was to be expanded to payments to entities for all personal services effective January 1, 1999.

After S.L. 1997-109 became law, legislators, staff, and the Department of Revenue were contacted by businesses that were required to withhold from their payments for personal services. These businesses stated that the withholding requirement would create an expensive, time-consuming burden on them. Large, multistate corporations in particular claimed that the new law would be burdensome. In response to

these concerns, the Revenue Laws Study Committee recommended this act, which repeals nearly the entire withholding requirement. The only part that it retains is the requirement to withhold from payments for services relating to entertainment and athletic events.

As enacted by S.L. 1997-109, the withholding requirement applied to payments made to nonresident contractors only if the total payments exceeded $600 during a calendar year. The $600 threshold is the federal threshold for tax reporting under section 6041 of the Internal Revenue Code. This act raises the threshold for withholding from contract payments to nonresident athletes and entertainers from $600 to $1,500 a year. The higher threshold will have the effect of insulating organizations, such as PTAs, from having to withhold on their occasional payments to out-of-state entertainers.

The rollback of the withholding requirement becomes effective retroactively as of January 1, 1998. Anyone who had been complying with the law by withholding for services other than those performed by athletes and entertainers could choose to refund the withheld taxes only if the taxes had not yet been paid into the Department of Revenue. All taxpayers who had taxes withheld from their payments will receive a credit for the withheld taxes when they file their income tax return.

The rationale for limiting the withholding requirement to athletes and entertainers is that athletic and entertainment events can be easily identified by those required to withhold, the entire performance is clearly taxable to the state where it occurs, and, because of the large sums often involved, the administrative burden of withholding is small compared to the benefit the State receives. For other personal services performed by nonresidents, the burden of compliance outweighs the benefit because the services are less easily identified and may be performed partly in this State and partly in another state. For those, such as large, multistate corporations, who deal with a myriad of contractors for goods and services throughout the nation, the burden can be significant.

The act also adds reporting and licensing requirements for nonresident individuals and foreign entities that seek occupational licenses for construction-related occupations. These changes affect four occupational licensing boards:

1. The State Licensing Board for General Contractors
2. The State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors
3. The State Board of Examiners of Electrical Contractors
4. The North Carolina State Board of Examiners for Engineers and Surveyors.

The act provides that each of these licensing boards must require a nonresident corporation or a nonresident limited liability company to first obtain a certificate of authority from the Secretary of State before being licensed by the board to do business or, in the case of engineers and surveyors, before having their certificate of licensure renewed. This requirement will become effective July 1, 1999. General law requires all foreign corporations and foreign limited liability companies to obtain a certificate of authority from the Secretary of State before transacting business in this State.

The act also provides a mechanism to prevent nonresident individuals and foreign entities from renewing their occupational licenses if they (or one of their partners or members, in the case of a partnership or limited liability company) owe a delinquent income tax debt. A delinquent income tax debt is a final debt after the taxpayer has been notified of the final assessment and no longer has the right to contest the amount. The

provisions relating to individuals go into effect July 1, 1999. The provisions relating to entities go into effect July 1, 2000.

If requested by the Secretary of Revenue, each construction-related licensing board will provide the Secretary of Revenue annual lists identifying the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the board. Occupational licensing boards are already required to obtained individual licensees' social security numbers under G.S. 93B-14. The Department of Revenue will check these lists against its records of taxpayers who owe delinquent income tax debts. If the Department of Revenue finds that a nonresident individual or a foreign corporation owes a delinquent tax debt, the Department will instruct the licensing board not to renew the taxpayer's license until the debt has been settled. If the Department of Revenue finds that a partner in a foreign partnership or a member of a foreign limited liability company owes a delinquent tax debt, the Department will instruct the licensing board not to renew the partnership or limited liability company's license until the debt has been settled. The license may be renewed once the licensing board receives written notice from the Secretary of Revenue that the debt has been settled.

Section 8 of the act clarifies that taxpayers are not entitled to an additional administrative hearing regarding a board's refusal to renew a license based on a delinquent income tax debt. The Department of Revenue will block renewals only for those debts for which the taxpayer has already been afforded full due process rights (CA) (MH) (MW)

Update IRC Reference/Conform Gift Tax, S.L. 1998-171 (HB 1326) makes the following changes relating to tax law:

1. It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1997, to September 1, 1998.
2. It conforms North Carolina tax law to the federal gift tax treatment of qualified tuition programs for taxable years beginning on or after January 1, 1998.
3. It extends the carryforward period for corporate net economic losses from five years to 15 years, effective for taxable years beginning on or after January 1, 1999, with a three-year cap on the amount of the extended losses that may be deducted.

Update Code Reference. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. This update generally has the greatest effect on State corporate and individual income taxes because these taxes are based on federal taxable income and are therefore closely tied to federal law. Congress made numerous, significant changes to the Code in 1997 that will affect taxable income. Other changes to the Code were made by the Internal Revenue Service Restructuring and Reform Act of 1998. Because the State corporate and individual income taxes are based upon federal taxable income, these changes affect State policies and revenues.

The act provides that the recent federal tax changes that could increase a taxpayer's North Carolina taxable income for the 1997 tax year will not become effective until January 1, 1998. Under Article 1, Section 16 of the North Carolina Constitution, the General Assembly cannot pass a law that will increase a tax retroactively. There are a number of provisions in the federal Taxpayer Relief Act of 1997 and the Internal

Revenue Service Structuring and Reform Act of 1998 that could increase taxable income for the 1997 tax year. Because the Code Update could not be acted upon until the 1998 Session of the General Assembly, these changes had to be given a delayed effective date.

The Code Update will reduce General Fund revenues by $6.97 million in fiscal year 1998-99, $4.01 million in fiscal year 1999-2000, $10.70 million in fiscal year 2000-01, $18.53 million in fiscal year 2001-02, and $33.64 million in fiscal year 2002-03.

The following list summarizes some of the more significant changes to the Code:

1. Repeals the former rules on rollover and one-time exclusion for capital gains on the sale of a taxpayer's principal residence and replaces them with an exclusion of $250,000 ($500,000 for joint filers) of capital gain from the sale of a residence occupied by a taxpayer as a principal residence for two of the previous five years.
2. Expands the business expense deduction for self-employed individuals' health insurance to a percentage of 50% effective in 2000. The percentage is then phased up reaching 100% in 2007.
3. Establishes Roth IRAs effective for tax years beginning on or after 1/1/98, which allow nondeductible contributions of up to $2,000 of compensation (limited for those with adjusted gross income above a certain amount).
4. Expands existing IRAs by increasing the income limits and allowing an IRA for the spouse of a disqualified active participant, effective for taxable years beginning on or after 1/1/98.
5. Provides an income tax exemption for the annual earnings on amounts contributed to qualified tuition programs, such as North Carolina's Parental Savings Trust Fund, for the future payment of room or board at an institution of higher education. (Since North Carolina law already exempted these earnings, the North Carolina exemption is repealed because the law will automatically piggyback the federal exemption.)

Qualified Tuition Plan Gift Tax. The act adopts for North Carolina gift tax purposes the provisions of federal law listed below. Conforming to federal law will relieve taxpayers from unexpected gift tax liability and will simplify tax compliance and administration.

1. A distribution from a qualified tuition program is not a taxable gift, unless a new beneficiary, who is a generation below the original beneficiary, is named to the account or receives the account in a rollover.
2. A contribution to a qualified tuition program is a gift to the designated beneficiary, but not a gift of a future interest. If the contribution were considered a gift of a future interest, a gift tax return would have to be filed even if the amount were under the $10,000 annual exclusion amount.
3. A contribution to a qualified tuition program is not a direct payment of tuition. If it were, it would be exempt from gift tax.
4. If a contribution exceeds the $10,000 annual gift tax exclusion amount, the donor may elect to avoid gift tax by treating the contribution as if it had been made over a five-year period. For example, a $25,000 contribution would not be taxable because it would be considered a gift of $5,000 a year over five years and thus would be below the $10,000 annual exclusion amount. These provisions apply to any

qualified State tuition program under section 529 of the Internal Revenue Code. North Carolina's Parental Savings Trust Fund is such a program.

Corporate Loss Carryforwards. The act extends the corporate income tax carryforward for net economic loss deductions from five years to 15 years, effective beginning with the 1999 tax year. Losses from 1993 and later tax years will benefit from this extension. For the first three years this extension is in effect, the carryforward deduction for losses more than five years old is restricted to 15% of taxable income. Beginning with the 2002 tax year, there will be no cap on the deduction for losses carried forward. A net economic loss is the amount by which a corporation's deductions for a taxable year exceed its income from all sources, including income not taxable by the State. Income not taxable includes income items that are deductible in determining State net income as well as a multi-state corporation's nonbusiness income that is allocable to another state.

The carryforward period for the similar net operating loss deduction under the Internal Revenue Code was recently extended from 15 to 20 years, but most states allow no more than a fifteen-year carryforward period. Because it may be difficult for an auditor to substantiate a loss carryforward based on deductions that are ten to fifteen years old, the act clarifies that the corporation must maintain records that verify the amount of the loss deduction claimed and also provides that the taxpayer or the Secretary of Revenue may redetermine an item for a tax year that is closed under the statute of limitations in order to calculate a loss carried forward to an open year. The net economic loss carryforward will reduce General Fund revenues by $3.70 million for each fiscal year beginning fiscal year 1999-2000 and ending fiscal year 2001-02. The reduction for fiscal year 2002-03 and thereafter will be $16 million a year. (CA) (MH) (MW)

Criminal Tax Violations, S.L. 1998-178 (SB 1228). See **CRIMINAL LAW.**

Increase Charity Tax Credit, S.L. 1998-183 (HB 20) increases the individual income tax credit for charitable contributions by nonitemizers, in order to provide an additional incentive for charitable giving. It increases the amount of the credit from 2.75% to 7% of eligible contributions, effective beginning with the 1999 tax year. The act is expected to reduce General Fund revenues by almost $8 million a year.

Under the federal Internal Revenue Code, an individual who itemizes deductions may deduct contributions to nonprofit charitable organizations. Individuals who elect the standard deduction, however, may not deduct charitable contributions. An individual's North Carolina's income tax is based on the federal calculation of taxable income, with some adjustments. The federal disallowance of charitable deductions for nonitemizers is "piggybacked" by North Carolina tax law.

Individuals who elect the standard deduction are those whose total itemized deductions (such as mortgage interest, State and local property and income taxes, medical expenses, and charitable contributions) do not exceed the standard deduction amount. The federal standard deduction amounts for 1997 are $6,900 for a married couple filing a joint return and $4,150 for a single individual.

In 1996, the General Assembly enacted G.S. 105-151.26, which allows a North Carolina income tax credit for 2.75% of a nonitemizer's charitable contributions to the

extent the contributions exceed 2% of the taxpayer's adjusted gross income. A tax credit is a dollar-for-dollar subtraction from tax rather than a subtraction from taxable income. Thus, if a taxpayer pays tax at the 7% rate, a 7% tax credit is equal to a full deduction. North Carolina's tax rates are 6%, 7%, and 7.75%. By raising the credit from 2.75% to 7%, this act makes the credit equivalent to the deduction currently enjoyed by most itemizers. (CA) (MH) (MW)

Amend Local Sales Tax, S.L. 1998-186 (SB 1150) based on a recommendation of the Education Oversight Committee, extends the period of time during which counties must use part of their local sales tax proceeds for public school capital outlay purposes. The act does not affect General Fund revenues.

There are three Articles of the Revenue Act that authorize counties to levy local sales and use taxes. Article 39 authorizes a one-cent tax, Article 40 authorizes a half-cent tax, and Article 42 authorizes an additional half-cent tax. Article 40 and Article 42 provide that the county is required to use a percentage of the tax revenue for public school capital outlay purposes, including retirement of outstanding debt. The earmarking in Article 40, enacted in 1983, was for the first ten fiscal years the tax was in effect and the earmarking in Article 42, enacted in 1986, was for the first eleven years that the tax was in effect. In 1993, the earmarking was extended for an additional five years for both Articles. Most counties enacted the first half-cent tax under Article 40 in 1983, so its 15 years' earmarking would have expired in 1998; most counties enacted the second half-cent tax under Article 42 in 1986, so its 16 years' earmarking would have expired in 2002.

This act extends the time periods under Articles 40 and 42 by 13 years and 9 years, respectively, so that the earmarking will continue to the year 2011. For these additional years, counties will be required to use 30% of the tax revenue from the first half-cent local sales tax (Article 40) and 60% of the tax revenue from the second half-cent local sales tax (Article 42) only for public school capital outlay purposes. In 1985, the General Assembly exempted Burke County from the restriction that it use a percentage of the first half-cent local sales tax for public school capital outlay purposes. This exemption remains.

If a county can demonstrate that it does not need the earmarked revenue to meet its public school capital needs, it may petition the Local Government Commission (LGC) to authorize it to use the money for any public purpose. In making its decision, the LGC must consider not only the public school capital needs but also the other capital needs of the county.

This act also defines public school capital outlay purposes as the term is defined in the School Budget and Fiscal Control Act. The term is defined broadly in that act to include appropriations for the acquisition of real property and buildings for school purposes as well as the acquisition of furniture, computers, equipment, buses, etc. The LGC currently interprets the term as it is defined in the School Budget and Fiscal Control Act. Therefore, this clarification of the law will not change the way counties are currently using the money. (CA) (MH) (MW)

No Sales Tax on Pay Phones, S.L. 1998-197 (HB 1126) exempts from sales tax pay telephone calls that are paid for by coin, effective January 1, 2000. Credit card calls and other calls not paid for by coin would not be exempt. The sales tax exemption allowed by this act will reduce General Fund revenues by approximately $2 million annually. The gross receipts from sales of all local telecommunications services are subject to State sales tax at 3% (G.S. 105-164.4(a)(4a)) and State gross receipts tax at 3.22% (G.S. 105-120). There is no local sales tax on these services. (CA) (MH) (MW)

Modify Controlled Substances Tax, S.L. 1998-218 (SB 1554) reduces certain tax rates of the excise tax on controlled substances in order to remove features of the tax found unconstitutional by the United States Court of Appeals for the Fourth Circuit in Lynn v. West.[9] It also removes the 50% penalty for failure to pay the tax and provides instead that interest and penalties for this tax will be the same as for all other taxes. The tax, at these new, lower rates, is expected to generate $1.3 million in General Fund revenues and $3.9 million for State and local law enforcement agencies. The act became effective October 26, 1998.

In 1989, the General Assembly enacted the excise tax on controlled substances as a means of generating revenue for State and local law enforcement agencies and for the General Fund. Under the law, a person who acquires illegal drugs is required to pay tax on them within 48 hours of acquiring possession if the tax has not already been paid as evidenced by a tax stamp. A person paying the tax is not required to disclose his or her identity and any information obtained in assessing the tax is confidential and cannot be used in a criminal prosecution other than a prosecution for failure to comply with the tax statute itself. Seventy-five percent of the revenue generated by assessments of the tax is distributed to the law enforcement agencies whose investigation led to the assessment. The remainder of the revenue is credited to the General Fund.

The purpose of the tax rate reductions is to remove features of the tax that caused the federal court to hold it unconstitutional. If these rate reductions have the effect of rendering the tax constitutional, then the State can collect the tax. If a court later holds that these rate reductions did not render the tax constitutional, the State could be required to refund taxes illegally collected or to rescind criminal drug prosecutions. The rate reductions appear to address the federal court's concerns but, because the federal court did not provide a clear test of what would make the tax constitutional, there remains some risk that the tax might later be invalidated again. This act provides a separate tax rate of $50 a gram for cocaine and changes the tax rate on drugs sold by dosage units from $400 to $200 per ten dosage units. Crack cocaine is sold in dosage units. The act also reduces the 50% failure to pay penalty to 10%, to keep it in line with a 1998 reduction in the tobacco tax penalty. Based on the court's holding that cocaine's market value is $25 a gram, the proposed rate tax would be twice the market value; when the 10% penalty is added, the total would be only slightly more than twice the market value. (CA) (MH) (MW)

Tax Relief, S.L. 1998-212, Part XXIXA (SB 1366, Part XXIXA) The Current Operations

[9] Lynn v. West, 134 F.3d. 582, cert. denied, 119 S. Ct. 47 (1998).

Appropriations and Capital Improvement Appropriations Act of 1998 contains twelve tax law changes.

1. Repeals the State sales tax on food.
2. Repeals the State inheritance tax.
3. Allows public schools to obtain an annual sales tax refund.
4. Extends the deduction for subsidiary dividends to foreign corporations.
5. Allows a State individual income tax credit for long-term care insurance.
6. Decreases the insurance regulatory charge from 8.75% to 6%.
7. Sets the public utility regulatory fee at 0.09%.
8. Increases the conservation tax credit for corporate and individual taxpayers.
9. Amends the Revenue Act to make tax penalties uniform.
10. Extends the sunset for the qualified business investment tax credit.
11. Modifies the qualified business investment tax credit for the movie industry.
12. Revises the property tax exemption for continuing care retirement homes.

These changes are summarized below or in other sections of this document as indicated.

Repeal State Sales Tax on Food, S.L. 1998-212, Sec. 29A.1 (SB 1336, Sec. 29A.1). In 1996, the General Assembly reduced the State sales tax on food from 4% to 3%, effective January 1, 1997. In 1997, the General Assembly reduced the State sales tax on food from 3% to 2%, effective July 1, 1998. This act completes the reduction by eliminating the remaining 2% State sales tax on food, effective May 1, 1999. The act also authorizes the Secretary of Revenue to earmark up to $174,000 of sales tax collections for 1998-99 for the administrative costs of revising and mailing forms. This section of the act will reduce General Fund revenues by $18.4 million in fiscal year 1998-99, $184.5 million in fiscal year 1999-2000, $190 million in fiscal year 2000-01, $195.7 million in fiscal year 2001-02, and $201.6 million in fiscal year 2002-03.

The sale of tangible personal property in North Carolina is subject to a 4% State sales tax unless it is specifically exempt from the tax. In 1971, 1983, and 1986, the General Assembly passed legislation allowing local governments to impose a local sales tax. The local sales tax rate is 2%. On most tangible personal property, the combined State and local sales tax rate is 6%. However, because of past legislation reductions, the combined State and local sales tax rate on food, effective July 1, 1998, was 4%. This section of the act repeals the State's remaining 2% sales tax rate on food, but retains the 2% local sales tax rate.

The sales tax on food applies to food that may be purchased with food stamps or other methods under the food stamp program. Federal law determines what can be purchased under the food stamp program and, therefore, what food is exempt from the State sales tax. Food purchased with food stamps is already exempt from both the State and the local sales tax, as required by federal law. (CA) (MH) (MW)

Eliminate North Carolina Inheritance Tax, S.L. 1998-212, Sec. 29A.2 (SB 1366, Sec. 29A.2) repeals the State's inheritance tax, but retains a State estate tax that is equivalent to the federal State death tax credit allowed on a federal estate tax return. This type of State estate tax is known as a "pick-up" tax because it picks up for the State the amount of federal estate tax that would otherwise be paid to the federal government. The repeal of

the State's inheritance tax is effective January 1, 1999, and applies to the estates of decedents dying on or after that date. This section of the act will reduce General Fund revenues by $52.5 million in fiscal year 1999-2000, $79.4 million in fiscal year 2000-01, $85.7 million in fiscal year 2001-02, and $92.6 million in fiscal year 2002-03.

Under prior law, North Carolina imposed an inheritance tax on property transferred by a decedent. The amount of tax payable depended on the relationship of the person transferring the property (the decedent) to the person receiving the property (the beneficiary). This was in contrast to federal law, which has a single rate schedule for estates.

State law classified beneficiaries into three classes and set different inheritance tax rates for each class. A Class A beneficiary was a lineal ancestor, a lineal descendant, an adopted child, a stepchild, or a son-in-law or daughter-in-law whose spouse was not entitled to any of the decedent's property. A Class B beneficiary was a sibling, a descendant of a sibling, or an aunt or uncle by blood. A Class C beneficiary was anyone who was not a Class A or Class B beneficiary. Class A beneficiaries had the lowest inheritance rates and a $600,000 inheritance tax exemption. Class B beneficiaries had higher rates and no exemption. Class C beneficiaries had the highest rates and no exemption. Thus, North Carolina's rate structure favored transfers to children and parents by giving those transfers the lowest rates plus an exemption and preferred transfers to other close family members over transfers to more distant relatives or to persons who were not related. (CA) (MH) (MW)

Sales Tax Refunds for Schools, S.L. 1998-212, Sec. 29A.4 (SB 1366, Sec. 29A.4) adds local school administrative units to the list of governmental entities that may obtain an annual refund of the State and local sales and use taxes paid by them. The change became effective July 1, 1998, and applies to taxes paid on or after that date. The refunds apply to direct purchases of tangible personal property. They also apply to sales and use tax liability indirectly incurred by a local school administrative unit on building materials, supplies, fixtures, and equipment that become a part of any building that is owned or leased by the unit and is being built, altered, or repaired for use by the unit. To obtain the refund, a local school administrative unit must request the refund in writing within six months after the end of the unit's fiscal year. The request must include any information and documentation required by the Secretary of Revenue. This section of the act will reduce General Fund revenues by $14.8 million in fiscal year 1999-2000, $15. million in fiscal year 2000-01, $14.4 million in fiscal year 2001-02, and $12.6 million in fiscal year 2002-03.

Prior to 1961, the State granted sales and use tax exemptions to State and local governmental entities, including public schools, and nonprofit entities. Because of the number of abuses involving the exemption and the difficulty of auditing these transactions, the General Assembly changed the law in 1961 to allow refunds as opposed to outright exemptions. The statute lists those entities that are entitled to a refund. Nonprofit educational institutions, as well as most other nonprofit entities, are entitled to a semiannual refund of State and local sales and use tax.

The General Assembly did not include State agencies in the list of entities entitled to an annual refund of State and local sales taxes because the refund process

would not benefit the General Fund, from which the agencies receive their appropriations, and would create unnecessary paperwork for the agencies. The General Assembly did not include public schools in the list of entities entitled to an annual refund for similar reasons. First, public school books and school lunches are exempt from sales tax. Second, most of the operating money for public schools comes from the General Fund, although most of the capital money comes from the counties.

Prior to the act, although a school board could not receive sales tax refunds, a county was entitled to a refund of State sales and use taxes paid if it purchased items on behalf of its school board. More than one-half of the counties have statutory authority to acquire property on behalf of their school boards and thus may receive sales tax refunds if they exercise that authority. The other counties do not have this authority, although the Attorney General's Office has stated that they may acquire property on behalf of their school board if they enter into an interlocal agreement with the school board. Under this act, the school board can receive the refunds directly, without having to arrange for the county to acquire the property and apply for the refunds on its behalf. (CA) (MH) (MW)

Corporate Dividend Technical Change, S.L. 1998-212, Sec. 29A.5 (SB 1366, Sec. 29A.5) extends the deduction for subsidiary dividends to corporations domiciled in other States. This is a technical change only because, due to the requirements of the Interstate Commerce Clause of the United States Constitution, the Department of Revenue was forced in 1997 to extend the deduction to out-of-state corporations. The statutory change conforms the statutes to the current practice and to the requirements of the Constitution.

Under prior law, G.S. 105-130.7(b) allowed a corporation domiciled in North Carolina that held more than 50% of the outstanding voting stock of another corporation (a subsidiary) to deduct dividends it receives from the subsidiary plus any expenses related to the dividends. The restriction of this deduction to North Carolina corporations created interstate commerce clause problems in light of the United States Supreme Court's 1996 Fulton decision, which struck down a similar provision in the intangibles tax. The Attorney General's Office advised the Department of Revenue that, if the General Assembly did not resolve the constitutional problem with this tax preference, the Department of Revenue could not enforce it. There was too much risk of personal liability on the part of Department of Revenue personnel in enforcing a provision that was so clearly flawed in the wake of the Fulton decision. This section of the act resolves the constitutional problem by extending the deduction to non-North Carolina companies, as the Department of Revenue had already done administratively. (CA) (MH) (MW)

Credit for Long-Term Care Insurance, S.L. 1998-212, Sec. 29A.6 (SB 1366, Sec. 29A.6) allows a State individual income tax credit of 15% of the premium paid each year on long-term care insurance. The credit may not exceed $350 for each policy for which the credit is claimed. The credit may not exceed the amount of tax owed by the taxpayer, and there is no provision to allow unused portions of the credit to be carried forward. The credit becomes effective for taxable years beginning on or after January 1, 1999, and expires for taxable years beginning on or after January 1, 2004. This section of the act will reduce General Fund revenues by $7.98 million in fiscal year 1999-2000, $8.87 million in fiscal year 2000-01, $9.82 million in fiscal year 2001-02, and $10.89 million in

fiscal year 2002-03. The Legislative Research Commission is directed to study the effect of the credit on the State's Medicaid costs and to report its finding to the 2004 Session of the 2003 General Assembly.

A taxpayer may claim a credit for policies that provide coverage for either the taxpayer, the taxpayer's spouse, or a family member for whom the taxpayer provides over half of the support and whose income is below an exemption amount. A long term-care insurance policy is one that provides only coverage of long-term care services and:

1. is guaranteed renewable;
2. does not provide for a cash surrender value;
3. provides that refunds and dividends may be used only to reduce future premiums or to increase future benefit;
4. does not pay or reimburse expenses that are reimbursable under Medicare; and
5. satisfies consumer protection laws.

Under federal law, premiums paid on long-term care insurance contracts are treated as deductible medical expenses. Under the medical expense itemized deduction, unreimbursed medical expenses may be deducted to the extent that the expenses exceed 7.5% of adjusted gross income. To the extent a taxpayer receives a deduction for long-term care insurance premiums under the Code, the taxpayer will also receive a deduction for State income tax purposes because North Carolina uses federal taxable income as the starting point for calculating State taxable income. To prevent a double tax benefit in those cases, the credit is limited to those expenses for which a deduction has not been claimed. The language in the act concerning no double tax benefit is identical to the language used in the credit for child health insurance enacted earlier in 1998. (CA) (MH) (MW)

Insurance Regulatory Charge, S.L. 1998-212, Sec. 29A.6 (SB 1366, Sec. 29A.6). See **INSURANCE.**

Public Utility Regulatory Fee, S.L. 1998-212, Sec. 29A.8 (SB 1366, Sec. 29A.8). See **COMMERCIAL LAW.**

Amend Conservation Tax Credits, S.L. 1998-212, Sec. 29A.13 (SB 1366, Sec. 29A.13) for taxable years beginning on or after January 1, 1999, the act increases an individual taxpayer's limit for the conservation tax credit from $100,000 to $250,000 and increases a corporate taxpayer's credit limit from $250,000 to $500,000. This section of the act will reduce General Fund revenues each fiscal year by $1.2 million. In 1997, the General Assembly increased the individual credit limit from $25,000 to $100,000, and increased the corporate credit limit from $25,000 to $250,000. The act also repeals the requirement that individual taxpayers add back the fair market value of the donated real property to their taxable income. This add-back requirement was originally placed in the law to prohibit individual taxpayers from receiving both a tax credit and a charitable deduction for the donated property.

This tax credit is allowed to individual and corporate taxpayers who make a qualified donation of an interest in North Carolina real property that is useful for public beach access or use, public access to public waters or trails, fish and wildlife

conservation, or other similar land conservation purposes. The tax credit is equal to 25% of the fair market value of the property donated to the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions. Both corporate and individual taxpayers are allowed to carry forward for five years any unused portion of the credit.

North Carolina is the only State that allows a conservation tax credit. The credit was enacted in 1983. The General Assembly did not want an individual to receive a double tax benefit for the donation, so it prohibited a charitable contribution deduction for the portion of the donation used to calculate the tax credit. In 1989, federal taxable income became the starting point in determining North Carolina taxable income. In order to maintain the single tax benefit, an addition to the federal taxable income in the year of the donation was required in the amount of the fair market value of the donated property. This add-back can be a disincentive to donating property in two cases:

1. If the taxpayer never deducts the entire fair market value of the donation as a charitable deduction. This situation can occur because the federal law imposes limitations on the amount of charitable contributions deductions in any year based on the taxpayer's adjusted gross income (usually 30% of adjusted gross income).
2. If the taxpayer never claims the entire tax credit for the donation. This can occur because the taxpayer may be unable to claim the entire amount of the credit within the six-year period.

The act remedies these disincentives by no longer requiring an individual taxpayer to add the fair market value of the donated property to federal taxable income in arriving at North Carolina taxable income. This change results in an individual taxpayer receiving both a charitable contribution deduction and a tax credit for the donation. Current law does not allow a corporation to take a charitable contribution deduction for its donation.

Under the Internal Revenue Code, a donation of real property for conservation purposes is treated as a charitable deduction. A qualified appraisal of the donated land is required if the claimed deduction is more than $5,000. This appraisal must be attached to the federal tax return. The North Carolina Department of Revenue requires no appraisal. (CA) (MH) (MW)

Revenue Penalties Uniform, S.L. 1998-212, Sec. 29A.14 (SB 1366, Sec. 29A.14) amends several sections of the Revenue Act to make tax penalties uniform. This portion of the act was requested by the Department of Revenue and recommended by the Revenue Laws Study Committee. These amendments, which are effective January 1, 1999, do the following:

- Repeal several penalties that are obsolete or ineffective.
- Provide that refunds of sales taxes, motor fuel taxes, and excise taxes on sacramental wine, are barred only if filed more than 3 years after their due date.
- Clarify that additional taxes are assessable as penalties so that it is clear the Secretary may waive the taxes. The act also clarifies that penalties are assessable as additional taxes to ensure the taxpayer receives the full administrative and judicial remedies applicable to tax assessments. This clarification conforms with the

following statutory definition of "tax" in G.S. 105-228.90: "[T]he terms 'tax' and 'additional tax' include penalties and interest as well as the principal amount."

- Provide a uniform penalty for most tax deficiencies that exceed 25% of the tax liability.
- Expand the statute concerning the personal liability of corporate officers who fail to remit certain taxes when due to include the manager and managing members of a limited liability company.

(CA) (MH) (MW)

Extend Qualified Business Credit Sunset, S.L. 1998-212, Sec. 29A.15 (SB 1366, Sec. 29A.15) extends the sunset for the qualified business investment tax credit an additional four years, until the year 2003. The act retains the current $6 million cap on the credit. This change became effective when the act became law on October 30, 1998.

The qualified business investment tax credit was enacted in August 1987 to promote economic development for North Carolina businesses. The initial credits applied to both corporations and individual taxpayers, and there was a $12 million cap on the total amount of all tax credits. In response to a 1996 United States Supreme Court decision in Fulton Corp. v. Faulkner, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit was to expire for investments made on or after January 1, 1999. The act extends the credit for four additional years until January 1, 2003.

The credit is allowed for an individual taxpayer that purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim the allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next five years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of $6 million in tax credits in proportion to the size of the credit claimed by each taxpayer. (CA) (MH) (MW)

Qualified Business Credit for Movies, S.L. 1998-212, Sec. 29A.16 (SB 1366, Sec. 29A.16) modifies the qualified business investment tax credit to make it more accessible for investors who provide capital for the film industry, effective for taxable years beginning on or after January 1, 1999. Specifically, the act modifies the qualified business investment tax credit in two ways:

1. Allows a qualified business venture in the film industry to pay off its investors in less than five years without causing the investors to forfeit the tax credit.
2. Provides that the effective date of registration for a qualified business venture whose application is accepted for registration is 60 days before the date its application was filed.

To be a qualified business venture eligible for the qualified business investment tax credit, the business must be engaged primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry and the business must be registered with the Secretary of State. The film industry is eligible to qualify for the credit, as a service-related industry.

To obtain a tax credit, a person must purchase the equity securities or subordinated debt directly from the qualified business. Subordinated debt is indebtedness that by its terms matures five or more years after its issuance, is not secured, and is subordinated to all other indebtedness. A taxpayer forfeits the credit if the qualified business redeems the securities purchased by the taxpayer within five years after the investment was made. In the film industry, a project in which a person may invest does not usually last five years, making it difficult to satisfy the five-year minimum for the investment. The act addresses this problem by allowing a business engaged primarily in the film production industry to redeem its securities within five years and to mature its subordinated debt within five years without causing an investor to forfeit the tax credit. The act provides that this redemption is allowed only if: (1) the redemption occurred because the qualified business venture completed the production of a film, sold the film, and was liquidated; and (2) neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the venture.

Under former law, no tax credit was allowed for an investment made in a qualified business venture before the date of the business's registration with the Secretary of State. In the film industry, a person invests in a project before the project is started. The practice is that the investments are placed in an escrow account until a sufficient amount of capital is obtained to begin a film's production. If enough funds are not raised, then the money in escrow is returned to the investors. To accommodate this unique situation, the act extends the time in which a taxpayer may make an eligible investment. It provides that the effective date of a business's registration is 60 days before the date its application is filed, as opposed to the date it is filed. The act also provides that if a taxpayer's investment is placed initially in escrow conditioned upon other investors' commitment of additional funds, the date of the taxpayer's investment is the date escrowed funds are transferred to the qualified business venture free of the condition, as opposed to the date the investment was actually made. (CA) (MH) (MW)

Continuing Care Retirement Homes Exempt, S.L. 1998-212, Sec. 29A.18 (SB 1366, Sec. 29A.18) temporarily revises an existing property tax exemption for retirement facilities that was recently held unconstitutional by the North Carolina Supreme Court.[10] The act exempts nonprofit continuing care retirement communities (CCRCs) whose governing body is not self-perpetuating but is selected by another publicly supported

[10] In re Springmoor, 348 N.C. 1 (1998).

501(c)(3) nonprofit. It effectively restores the exemption for those CCRCs that were exempt under the law struck down by the court, but retains taxability of those CCRCs that have been taxed all along. It does not affect charitable homes for the aging, which are exempt under current law and were not affected by the court case.

From its enactment in 1987 until it was struck down by the North Carolina Supreme court as unconstitutional in 1998, G.S. 105-275(32) provided a property tax exemption for continuing care retirement centers that were owned and operated by religious or Masonic organizations. The court found that the exemption was an establishment of religion in violation of the First Amendment of the United States Constitution. The effect of the court case is that the property of continuing care retirement centers previously exempt under the statute would have been taxable beginning with the 1998-99 property tax year, unless they qualified for exemption as charitable homes under G.S. 105-278.6.[11] There would be no taxation for earlier years, however. This act temporarily revises this property tax exemption effective for taxes imposed for taxable years beginning on or after July 1, 1998. The exemption will remain in effect for two years, the 1998-99 and 1999-2000 property tax years.

Property owned by a nonprofit home for the aged, sick, or infirm is exempt from property tax if used for a charitable purpose.[12] A charitable purpose is defined as "one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward." The property tax exemption set out in the act is necessary because some continuing care retirement centers may not be charitable and therefore would not qualify for this exemption.

Under the act, an institution that fails to qualify as charitable will receive a property tax exemption for its property if it meets all of the following conditions:

1. The institution owns the property and uses it for a retirement community that includes a skilled nursing facility or an adult care facility and also includes independent living units. (In other words, as under prior law, the exemption applies to continuing care retirement communities, but not stand-alone nursing homes or rest homes.)
2. The institution must be nonprofit and exempt from income tax, and its assets upon dissolution must revert to a 501(c)(3) charitable organization.
3. The institution must have an active fund-raising program to assist it in providing services to those who do not have the financial resources to pay the fees.
4. The governing body of the institution must be selected by a charitable nonprofit that is exempt under section 501(c)(3) of the Internal Revenue Code and is a publicly supported charity. (A publicly supported charity is a charity that is not a private foundation under section 509 of the Code).

(CA) (MH) (MW)

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[11] The Springmoor case does not affect the sales tax refunds to which continuing care retirement enters are entitled under G.S. 105-164.14.

[12] G.S. 105-278.6. In addition, retirement centers that are funded by North Carolina Medical Commission bonds are also exempt from property taxes under G.S. 131A-21 as long as the bonds are outstanding. See In re Appeal of Glenaire, (N.C. Ct. App. 2/7/95, unpublished), rev. denied 360 N.C. 261 (1995).

Local Government Debt Changes, S.L. 1998-222, (SB 873), extends the requirement of Local Government Commission (LGC) approval to certain local government debt not now subject to LGC approval. The LGC would be required to approve the debt if it found that the amount is not excessive, that the entity operating the project and the entity issuing, securing, or incurring the debt demonstrate financial responsibility, and that the proposed date and manner of sale will not adversely affect any other anticipated sale of State or local obligations. The act applies to the few types of debt that are not now generally subject to LGC approval, but does not apply to debt that, because of its small size or other similar characteristics, is specifically exempted from LGC approval under current law.

The LGC must approve virtually all bonds, installment purchase contracts, and other debt arrangements that local governments may enter into. In general, the LGC is required to approve proposed debt if all of the following conditions are met:

1. The debt is necessary or expedient.
2. The amount is adequate and not excessive.
3. The local government has good debt management practices.
4. In the case of general obligation debt and installment purchase contracts, that an excessive increase in taxes will not be required. In the case of revenue bonds, that the project that will generate revenues to pay the debt is feasible.
5. That the proposed debt can be marketed at reasonable interest costs.

There are two types of debt for which LGC approval is not specifically required: local housing debt and debt issued by a nonprofit corporation on behalf of a local government. As explained below, these are not specific exceptions to the approval requirement enacted by the General Assembly. Instead, they are situations that have evolved independently and do not reflect a policy judgment by the General Assembly that LGC approval should not be required.

These situations represent loopholes enabling local units to issue debt that the LGC considers unsound. Failure to obtain LGC approval may be due to a lack of security for the debt. If a local government uses one of these loopholes to issue less secure debt without LGC approval, the resulting risks of default will have a negative effect on the bond ratings or the debt interest cost of all local governments in North Carolina.

Local Housing Debt. LGC approval is not required for debt of local housing authorities or of local governments exercising the powers of local housing authorities. Chapter 157 of the General Statutes authorizes the creation of local housing authorities. This law, enacted in 1935, is apparently based on a model act. The law was originally enacted to enable local housing authorities to act as conduits for federal housing funds. The authority issued the bonds for housing projects it owned and operated. Housing subsidy payments by the federal government to the authority effectively provided federal government backing for the bonds. For these reasons, LGC approval was not added to the law. In the late 1980s, however, the situation changed. First, local housing authorities were granted expanded authority to provide low-income and moderate income housing. Then, the federal funds that supported housing projects were phased out. In search of a new mission, some local housing authorities have looked to issuing tax-exempt bonds for private developers. Without the backing of the federal government

and without any requirement for LGC approval, some of these bonds may not be as secure as other North Carolina local bonds.

The housing bond problem is compounded by the fact that G.S. 160A-456 and G.S. 153A-376 grant counties, cities, and towns the authority to exercise the statutory powers of local housing authorities. Under general law, a county or city may finance housing with bonds or installment purchase contracts, subject to approval by the LGC. If its proposed project is too risky to be approved, however, it can issue the bonds through the authority granted to local housing authorities under Chapter 157 of the General Statutes. This loophole creates the potential for a local government bond default.

Nonprofit Corporate Agent Debt. The other type of local debt for which LGC approval is not required is debt issued on behalf of a local government by a nonprofit corporation. The Internal Revenue Service ruled in 1963 that bonds issued by such a nonprofit corporation may be tax-exempt if the income and property of the corporation will revert to the local government, and certain other requirements for tax exemption are satisfied. The debt issued is not the debt of the local government but of the nonprofit corporation. Some bond attorneys believe that, as an agency of the local government, the nonprofit corporation must comply with the restrictions, such as LGC approval, that apply to the government. Other bond attorneys, however, take the view that the nonprofit corporation is subject only to the rules applicable generally to nonprofit corporations under Chapter 55A of the General Statutes and need not seek LGC approval before issuing debt. Thus, if the LGC turns down a proposed local government financing because it is too risky, the local government may use a nonprofit corporation to go ahead with the debt. These nonprofit corporations are generally given names that make them sound like government or quasi-government agencies, such as "City of X Financing Assistance Corporation." As a result, although any default would technically be by the corporation and not the local government, in the marketplace, the default is likely to be considered a default by a local government unit. This perception will damage the reputation of North Carolina local governments in general.

Exceptions to Approval Requirement. Except in the cases noted above, all local government bonds are subject to LGC approval. The current law provides an exemption from the LGC approval requirement, however, for non-bond debt in specific situations. This act does not affect those exemptions. These exemptions are:

1. Obligations for a period of less than five years.
2. Debts that are less than $500,000 or 1/10 of 1% of the local unit's property tax base, whichever is less.
3. Contracts between a unit of local government and the State or the United States, entered into as a condition of a grant or loan to the local unit.
4. Financing of motor vehicles or voting machines.

The act becomes effective March 1, 1999.

(CA) (MH) (MW)

Studies

Legislative Research Commission Studies

Study Property Tax Exemptions for Nonprofit Institutions, S.L. 1998-212, Sec. 29A.18 (SB 1366, Sec. 29A.18) directs the Legislative Research Commission to study property tax exemptions for nonprofit institutions, and to report its recommendations to the 2000 Session of the 1999 General Assembly. This section became effective July 1, 1998.

Referrals to Existing Committees

Study Definition of Doing Business in North Carolina, S.L. 1998-212, Sec. 21A.1 (SB 1366, Sec. 21A.1) directs the Revenue Laws Study Committee to study the definition of doing business for purposes of corporate income tax. This section became effective July 1, 1998.

Study Taxpayer Attorney Fee Issue, S.L. 1998-212, Sec. 29A.17 (SB 1366, Sec. 29A.17) directs the Revenue Laws Study Committee to study whether a taxpayer should be reimbursed by the State for attorneys fees when the taxpayer substantially prevails in an administrative procedure or a lawsuit. The Revenue Laws Study Committee shall report its recommendations to the 1999 General Assembly. This section became effective July 1, 1998.

No Tax on Gas Cities, S.L. 1998-22 (SB 1327) directs the Revenue Laws Study Committee to study the distributions of piped natural gas proceeds to municipalities, and to report to the 2000 Session of the 1999 General Assembly. This section became effective June 30, 1998.

TRANSPORTATION

[Brenda Carter (BJC), Giles S. Perry (GP)]

Enacted Legislation

Department of Transportation

Restructure DOT Board, S.L. 1998-169 (HB 1304) as amended by S.L. 1998-217, Sec. 63 (SB 1279, Sec. 63) reduces the size of the Board of Transportation (Board), changes the method by which it is appointed, and adds new ethics disclosure and training requirements for Board Members.

Specifically, the act:

- Reduces the Board from 26 to 19 members, with staggered terms;
- Changes the structure of appointments, with 14 transportation division members appointed by the Governor, and five at-large members in designated slots appointed by the Governor;
- Provides 30 days for the Joint Legislative Transportation Oversight Committee to review and comment on proposed appointees;
- Requires three members of the Board to be of a political party other than the Governor's;
- Provides that the chair and vice chair will be selected by the Board from among its members;
- Designates the Secretary of Transportation as a non-voting ex officio member of the Board;
- Requires the Secretary and Board members to disclose real estate holdings and transportation related business interests;
- Requires the Secretary and Board members to disclose any campaign contributions made by them or their immediate family members to the political campaign of the appointing Governor in the two years prior to appointment;
- Requires the Secretary and Board members to disclose any contributions the member personally acquired in the two years prior to appointment for any campaign for a statewide or legislative elected office, or any political executive committee or political committee acting on behalf of a candidate for statewide or legislative office;
- Institutes new ethics rules, including a requirement that a comprehensive ethics policy be adopted by the Board that prohibits conflicts of interest, appearances of conflicts of interest, and self benefiting activities, and requires filing of a statement of economic interest and a listing of membership in transportation advocacy groups;
- Requires that the Board develop an ethics education program for Board members, with yearly updates;
- Requires the Department of Transportation (Department) to notify local governments about certain Department projects, solicit their comments, and gives them 45 days to respond;

- Increases the criminal penalty for self dealing by Board members, prohibits Board members from benefiting family members, and prohibits Board members from profiting from the use of inside information;
- Requires the Board study realignment of the 14 Transportation Divisions of the Department;
- Requires the Board study establishment of Rural Planning Organizations;
- Requires the Board study the backlog of State road maintenance needs;
- Requires the Board develop a plan to ensure that Board members have additional technical assistance to allow them to be fully informed.

The disclosure of contributions provisions are effective December 1, 1998. The Board's ethics policy must be adopted by December 1, 1998. The criminal penalty change became effective December 1, 1998, and applies to actions taken on or after that date. The local participation change is effective January 1, 1999, and applies to actions taken by the Board on or after March 1, 1999. The disclosure of campaign fund-raising requirement is effective January 1, 2001. The change to the Board's structure is effective January 1, 2001. Other provisions became effective October 1, 1998. (GP)

Design-Build Transportation Construction Contracts Authorized, S.L. 1998-212, Sec. 27 (SB 1366, Sec. 27) authorizes the Board of Transportation to award up to three contracts annually for construction of transportation projects on a design-build basis. This section became effective July 1, 1998. (GP)

Outdoor Advertising Just Compensation Sunset Extended, S.L. 1998-212, Sec. 27.5 (SB 1366, Sec. 27.5) extends the sunset (from June 30, 1998, to June 30, 2002) for the requirement that just compensation must be paid for removal by local governments of billboards lawfully erected adjacent to an interstate or federal-aid primary highway. This extension is necessary to avoid the possible loss of 10% of the State's federal highway funds. This section became effective July 1, 1998. (GP)

License Plates

Native American Special Plates, S.L. 1998-155 (HB 1082) authorizes the Division of Motor Vehicles (DMV) to issue Native American Special Registration Plates. The plates will bear words and a picture representing Native Americans, and will be issuable only if DMV receives at least 300 applications for the plate. The Native American special registration plates will be subject to the regular annual motor vehicle registration fees plus an additional fee of $10.00. The act also allows an increase in the maximum number of members on the North Carolina Indian Housing Authority. The number, which is set by the North Carolina State Commission of Indian Affairs, may now range as high as 15 members; the previous maximum was 9. The act became effective September 24, 1998. (BJC)

Eagle Scout Special Plates, S.L. 1998-160 (HB 1518) authorizes the Division of Motor Vehicles (DMV) to issue special registration plates to certified Eagle Scouts, to recipients

of the Girl Scout Gold Award, or to their parents or guardians. The plates would bear the words "Eagle Scout" or "Girl Scout Gold Award". The Eagle Scout plate and the Girl Scout Gold Award plates will be issuable only if DMV receives at least 300 applications for the plate. Both special registration plates are subject to the regular annual motor vehicle registration fees plus an additional fee of $10.00. The act also directs DMV to issue reduced size registration plates for motorcycles and motorcycle trailers. The act became effective September 28, 1998. (BJC)

Purple Heart Special Plates, S.L. 1998-163 (HB 55) provides that special registration plates for Purple Heart recipients will be issued without an additional fee. Under prior law, Purple Heart registration plates were subject to the regular annual motor vehicle registration fees plus an additional fee of $10.00. The Division of Motor Vehicles (DMV) is directed to redesign the Purple Heart special license plate by January 1, 1999. The act authorizes DMV to issue a special registration plate to a recipient of the Silver Star, the Bronze Star or the Distinguished Flying Cross. These special plates would be subject to the regular motor vehicle registration fee plus an additional fee of $10.00. The act became effective September 29, 1998. (BJC)

Great Smoky Mountains Special License Plate, S.L. 1998-212, Sec. 15.4 (SB 1366, Sec. 15.4) authorizes the Division of Motor Vehicles to issue a "Great Smoky Mountains National Park" plate without the words "First in Flight". The section became effective October 30, 1998. (GP)

Motor Vehicles

Delay Release of DMV Records to Marketers, S.L. 1998-23, Sec. 17.1 (SB 620, Sec. 17.1), as amended by S.L. 1998-212, Sec. 27.18 (SB 1366, Sec. 27.18) delays any release of personal information in Division of Motor Vehicles files for bulk distribution for surveys, marketing, or solicitations until January 1, 2000, and directs the Joint Legislative Transportation Oversight Committee to study the issue and report its recommendations by December 1, 1999. This section became effective October 30, 1998. (GP)

Motor Vehicle Technical Changes, S.L. 1998-149 (HB 1474) makes various changes to the motor vehicle laws. Section 1 clarifies the definition of "out-of-service order" so that it corresponds with the definition in federal regulations (49 CFR 390.5). An out-or-service order is an order issued by a certified Division of Motor Vehicles (DMV) officer for violation of a federal motor carrier safety regulation. Section 2 allows persons who want to renew their drivers license early to do so up to 180 days before their current license expires. Under current law, a driver's license may be renewed up to 60 days early. Sections 2.1, 2.2, and 2.3 change the graduated drivers license law to authorize DMV to give credit for out-of-state driving experience under a learner's permit or other restricted license. Current law only allows DMV to recognize out-of-state experience under an unrestricted out-of-state license. Sections 2.4 and 2.5 make clear that DMV has the flexibility to approve someone other than a parent or guardian as a supervising driver

of a person with a graduated drivers license. Section 3 adds the following to the list of grounds for disqualifying a person from driving a commercial motor vehicle, as provided in federal regulations (49 CFR 383.51): conviction for violation of an out-of-service order, including an out of state conviction; and conviction for any listed offense under G.S. 20-17.4, if the person does not have a commercial drivers license. Section 4 clarifies that the out-of-service criteria referred to in 49 CFR Subchapter B applies to a person who drives a commercial motor vehicle in N.C. Section 5 clarifies the definition of a Class H endorsement. Section 6 authorizes certain motorsports related trailers up to 46 feet in length, as required by federal regulations (49 CFR 658.17). Section 7 authorizes single vehicles with two axles up to 40 feet in length. Current law allows 35 feet. Section 8 deletes an out of date reference in G.S. 20-11(b)(3). Section 9 clarifies that the weight exception in 20-118(c)(1) does not apply on interstate highways. Section 9.1 adds "vehicles specifically designed for fire-fighting" to the weight exception list. The exception would not apply to interstates, in order to comply with federal law. Section 9.2 deletes the requirement that warning tickets must be prenumbered and copies forwarded to DMV, and allows DMV to instead electronically access law enforcement warning ticket information. Section 10 clarifies that a person may not pass a stopped school bus in a "public vehicular area." Sections 11 and 12 clarify that federal hazardous materials regulation enforcement is part of DMV enforcement's motor carrier safety duties. Section 11.1 regarding voter registration at DMV offices is summarized under CONSTITUTIONAL AND ELECTION LAWS. Section 13 provides that the act became effective December 1, 1998. Sections 2.1, 2.2, 2.3, 2.4 and 2.5 became effective September 22, 1998. (GP)

Driving Eligibility Certificates, S.L. 1998-212, Sec. 9.21 (SB 1366, Sec. 9.21). See **EDUCATION.**

Payments to Contract Agents for Collecting Emission Control Civil Penalties and for Making Sales of Inspection Stickers to Licensed Inspection Stations, S.L. 1998-212, Sec. 27.6 (SB 1366, Sec. 27.6) authorizes the Division of Motor Vehicles to compensate commission contract (tag) agents for collection of civil penalties against motorists for emissions violations, and for sale of inspection stickers to licensed inspection stations. This section became effective July 1, 1998. (GP)

Branded Title Clarification, S.L. 1998-212, Sec. 27.8 (SB 1366, Sec. 27.8) makes technical and clarifying changes to G.S. 20-71.3, which was amended by a special provision in the 1997 budget (S.L. 1997-443, Sec. 32.26). That section was apparently intended to limit Division of Motor Vehicles anti-theft inspections of totaled vehicles to those vehicles that were less than six years old. The 1997 provision had two apparently unintended consequences: (1) it required all older, totaled vehicles to be branded (rather than only those where the value of repairs was more than 75% of the wholesale value); and (2) the age threshold for anti-theft inspections was set at six years or less, rather than five years or less. Section 27.8 corrects the first of these unintended consequences, but leaves the second in place. Section 27.8 also amends G.S. 20-71.4 to make failure to disclose that a vehicle is or was a flood vehicle, a reconstructed vehicle, or a salvage

motor vehicle a Class 2 misdemeanor, regardless of the age of the vehicle. Section 27.8 also requires the Joint Legislative Transportation Oversight Committee to study salvage titles, anti-theft inspections, and damage disclosures and report to the 1999 General Assembly. This section became effective July 1, 1998. (GP)

Performance Audit of Public Transportation and Rail Divisions, S.L. 1998-212, Sec. 27.10 (SB 1366, Sec. 27.10) directs the State Auditor to conduct a performance audit of the Public Transportation and Rail Divisions of the Department of Transportation by February 1, 1999. (GP)

Railroads

Repeal/Recodify Railroad Laws, S.L. 1998-128 (HB 1094) repeals obsolete or preempted provisions of the General Statutes affecting railroads, and makes additional conforming and clarifying changes. The provisions regarding railroads are recodified from Chapter 62 (Public Utilities) to Chapter 136 (Roads and Highways). The Department of Transportation, rather than the Utilities Commission, will regulate railroad crossings. The act repeals G.S. 160A-195, which authorized a city to regulate the speed at which trains may be operated within the corporate limits. The rationale for repeal of the provision is preemption by federal law. The act makes it a Class 3 misdemeanor to ride on a train without purchasing a ticket, and makes the unauthorized manufacture or transfer of switch-lock keys a Class 1 misdemeanor. The act provides that the ticket agent of a passenger train may refuse to sell a ticket to an intoxicated person; an intoxicated person who attempts to board a train after being forbidden by the conductor to do so is guilty of a Class 1 misdemeanor; and a passenger who refuses to pay the fare, or who becomes intoxicated or violates rules may be ejected. The act became effective September 4, 1998. (BJC)

Transit

Clarify Transit Authority Debt, S.L. 1998-70 (SB 1289) clarifies the authority of regional transit authorities to use installment purchase financing. G.S. 160A-20 authorizes units of local government to purchase or finance the purchase of real or personal property by installment contracts that create a security interest in the property purchased. The contracts would secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction. The act amends the existing definition of a "unit of local government" to include regional public transportation authorities and regional transportation authorities. The act also amends the general powers of a Regional Public Transportation Authority and those of a Regional Transportation Authority to include the power to purchase or finance real or personal property by installment purchase financing. The act became effective July 30, 1998. (BJC)

Transportation Corridors, S.L. 1998-184 (SB 1291) expands existing law concerning Roadway Corridor Official maps by: (1) authorizing the Department of Transportation (DOT) and cities to preserve transit corridors, in addition to road corridors; and (2) authorizing Public Transit Authorities created under Articles 26 and 27 of Chapter 160A to preserve transit corridors (including adjacent stations or parking lots). In addition, the act changes the procedures concerning adoption and effect of the transportation corridors official maps, as follows: (1) requires indexing of the corridor in the grantor files at the register of deeds, to insure notice to affected property owners and subsequent purchasers; (2) clarifies that all notice and indexing procedures in the statute apply to amendments as well as the original filing of the corridor; (3) provides an appeal procedure from a transit authority to DOT if the authority denies a petition for a variance from a corridor; and (4) clarifies that appraisals of land subject to the corridor official maps shall not be affected by the fact that it is in a corridor. The act also makes several conforming changes, including extending the favorable property tax treatment for land subject to *highway* corridor official maps to land subject to all of the newly redesignated *transportation* corridor official maps. The act became effective November 1, 1998. (GP)

Trucks

Apple/Xmas Tree Truck Weights, S.L. 1998-177 (SB 427) allows overweight trucks transporting apples or Christmas trees to operate on certain light-duty roads. The exceptions to the normal weight limitations apply to apples when transported from the orchard to the first processing or packing point and to Christmas trees from the field, farm, stand, or grove to the first processing point. The act became effective October 8, 1998. (BJC)

Agricultural Transport/Temp. Conservation Rule, S.L. 1998-165 (SB 1285). See **AGRICULTURE AND WILDLIFE.**

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Independent Studies, Boards, Etc. Created, Continued or Changed

Restructure DOT Board, S.L. 1998-169 (HB 1304). See summary above.

Blue Ribbon Transportation Finance Study Commission, S.L. 1998-212, Sec. 27.15 (SB 1366, Sec. 27.15) establishes a fifteen member Blue Ribbon Commission to study Highway Trust Fund Act of 1989, current transportation revenue sources, transportation maintenance funding, public transportation funding, transfers from the Highway Fund to the General Fund, and other issues related to transportation finance. The Commission is directed to make an interim report by June 30, 1999 and a final report by March 1, 2000. This section became effective July 1, 1998. (GP)

Referrals to Existing Committees

Joint Legislative Transportation Oversight Committee Study Nonbetterment Utilities Relocations, S.L. 1998-212, Sec. 27.13 (SB 1366, Sec. 27.13) directs the Joint Legislative Transportation Committee to study the statutory requirement of G.S. 136-27.1 that the Department of Transportation pay, in certain circumstances, for the nonbetterment costs for the relocation of water and sewer lines located within existing State Highway rights-of-way that must be moved for State highway projects. This section became effective July 1, 1998. (GP)

Regional Transportation Study by Centralina Council of Government Funds, S.L. 1998-212, Sec. 27.12 (SB 1366, Sec. 27.12) authorizes the Department of Transportation to expend up to $500,000 to fund an ongoing regional transportation study by the Centralina Council of Governments through the Regional Business Committee on Transportation. This section became effective July 1, 1998. (GP)

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