SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1999

1999 GENERAL ASSEMBLY
FIRST SESSION 1999

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
OCTOBER 1999

October, 1999

To the Members of the 1999 General Assembly:

This publication contains summaries of all substantive legislation of general applicability and certain local legislation having general import of the 1999 Regular Session. Most local bills are not analyzed in this publication. 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. Mr. Joe Moore of the Legislative Library redesigned this year's publication to a more readable format.

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, Esther Manheimer, Theresa Matula, Jo McCants, Giles Perry, Barbara Riley, Walker Reagan, Steve Rose, Ebher Rossi, Mary Shuping, John Young, and Richard Zechini. Also contributing are Martha Harris and Gann Watson of the Bill Drafting Division, and Martha Walston of the Fiscal Research Division. Kory Goldsmith is the chief editor of this year's summaries, and Linda Attarian is the co-editor. DeAnne Mangum and Ken Melton of the Research Division also helped with the editing of this document. The specific staff members contributing to each subject area are listed directly below the Chapter heading for that 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.

This document is also available on the World Wide Web. Go to the General Assembly's homepage at http://www.ncga.state.nc.us. Click on "Legislative Publications". It is listed under Research. Each summary is hyperlinked to the final bill text, the bill history, and any applicable fiscal note.

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

TABLE OF CONTENTS

Chapter 1
Agriculture

Linwood Jones (LJ), Barbara Riley (BR)

Enacted Legislation
Tobacco

Tobacco Settlement/Approve Nonprofit Corporation

S.L. 1999-02 (SB 06) approves the creation of a nonprofit corporation for the receipt and distribution of 50% of the funds from Phase I of the tobacco settlement, encourages the appointment of tobacco, health, and economic development interests to the corporation's board of directors, and expresses the General Assembly's intent to create two separate trust funds to handle the remaining 50% of the Phase I settlement monies.

Approval of the Nonprofit Corporation. The act provides that the General Assembly approves of the creation of the nonprofit corporation established under the Consent Decree for the purposes and on the terms and conditions set forth in the Consent Decree. The Consent Decree awarded one-half of the Phase I settlement funds to the nonprofit corporation so that the corporation can provide economic impact assistance to economically-affected or tobacco dependent regions of the State. The Consent Decree calls for the corporation to be organized as a 501(c)(3) organization under the federal tax laws. Both a private foundation and a public charity fall under the 501(c)(3) umbrella. The act provides that the nonprofit corporation will be organized as a public charity rather than a private foundation.

Appointments to the Board. The act recognizes the appointment provisions of the Consent Decree and makes no changes. The act provides that it is the intent of the General Assembly that the three appointing authorities – the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives – should include among their appointments representatives of the following interests: tobacco production, tobacco manufacturing, tobacco-related employment, health, and economic development. This language does not bind the appointing authorities.

Tax Returns and Annual Report. The act directs the Attorney General to draft articles of incorporation for the nonprofit corporation, and directs the nonprofit corporation to consult with the Joint Legislative Commission on Governmental Operations in adopting its bylaws and preparing its annual operating budget. The nonprofit corporation will be subject to the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, and the Public Records Act, Chapter 132 of the General Statutes.

Intent to Create Trust Funds for the Remaining 50%. The Consent Decree awards the remaining one-half of the Phase I settlement to the Settlement Reserve Fund. The Settlement Reserve Fund is a special reserve account within the General Fund that was established in 1998 in anticipation of monies from a tobacco litigation settlement. Neither the Consent Decree nor the Master Settlement Agreement between the states and the tobacco companies restricts how the legislature may use this money.

The General Assembly's intent is to create two separate trust funds to share the remaining funds. Each trust fund would receive 25% of the total Phase I monies. One trust fund would be for the benefit of tobacco growers, allotment holders, and those in tobacco-related employment. A board of trustees representing these interests would govern this trust fund. The trust fund could provide direct financial assistance to these beneficiaries "in accordance with criteria adopted by the board of trustees and to the extent allowed by law." The second trust fund would be for the benefit of health and would be governed by a board of trustees

representing a broad range of health interests. Legislation is pending on these two trust funds. (See Major Pending Legislation below.)

The act became effective March 16, 1999. (LJ)

Tobacco Reserve Fund/Model Act

S.L. 1999-311 (SB 915) implements one of the provisions of the Master Settlement Agreement between the states and the tobacco manufacturers. The act requires nonparticipating manufacturers to either participate in the Master Settlement Agreement or pay annually into an escrow account. The escrow account will be placed with a qualified financial institution having no affiliation with a tobacco manufacturer.

The purpose of escrowing the funds is to ensure that the State will have a source of financial recovery against any nonparticipating manufacturer if the State should win a judgement against or enter into a settlement with these companies on the same grounds that it settled the lawsuit against the participating manufacturers. The nonparticipating companies' obligation to make payments into the escrow account is indefinite, as is the participating manufacturer's obligation under the Master Settlement Agreement. Each annual payment, however, is to be released to the paying company 25 years after the payment is made, unless the payment is needed to satisfy a judgement. The interest earned on the account belongs to the paying companies as it is earned. In addition, if a company shows that the funds it paid into the escrow account exceed the amount it would have paid as a participant to the Master Settlement Agreement, then the excess is to be returned to the company.

Civil penalties are authorized for failure to make annual payments. The penalty may accrue to a total of 100% of the amount due. In addition, civil penalties of up to 300% of the amount owed may be imposed for knowingly failing to make the payments. A company with two knowing violations shall be prohibited from selling cigarettes in North Carolina for a period not to exceed two years.

Finally, the act provides for a division of enforcement responsibilities between the Attorney General's Office and the Department of Revenue. The Attorney General's Office is to provide the Department of Revenue with a list of the nonparticipating manufacturers and the brand names of their products and keep this list updated. The Secretary of Revenue must require those paying the tobacco excise tax to identify the amount of tobacco products of the nonparticipating manufacturers that they sell. The Secretary of Revenue must also determine the amount of the State tobacco excise taxes attributable to the products of the nonparticipating manufacturers and report this information to the Attorney General's Office.

The act became effective July 15, 1999. (BR)

Phase II Funds/Immunity/Tax-Exempt

S.L. 1999-333 (HB 74). See **Taxation.**

Agriculture and Forestry

Repeal Obsolete Agriculture Statutes

S.L. 1999-44 (HB 334) repeals a number of statutes administered by the Department of Agriculture. Specifically repealed are:

- G.S. 81A-41, Establishment of standard loaves of bread.
- G.S. 81A-44, Authority to prescribe standards of weight or measurement for sale of milk or milk products.
- Article 37 of Chapter 106 of the General Statutes governing cotton grading.

- G.S. 106-456 through 460 directing tobacco warehouse operators to keep records of the number of pounds of tobacco sold and to report the information to the Commissioner of Agriculture.
- Article 41 of Chapter 106 of the General Statutes governing scrap tobacco dealers.
- Articles 59 and 60 of Chapter 106 governing the Northeastern North Carolina Farmers Market Commission and the Southeastern North Carolina Farmers Market Commission respectively.

The act became effective May 13, 1999. (BR)

Prescribed Burning in Forests

S.L. 1999-121 (HB 316) adds a new Article 4E to Chapter 113 of the General Statutes setting forth the conditions for conducting a "prescribed burning" of forestland and limiting the liability of landowners and their agents for nuisance and smoke damage from a properly conducted burning. A prescribed burning is a planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and environmental conditions, while following appropriate measures to confine the fire to a predetermined area and to accomplish the intended management objectives. The act provides that a prescribed burning conducted according to the provisions of the law will not constitute a public or private nuisance. A landowner or his agent conducting a prescribed burning in accordance with the statute shall not be liable in a civil action for damages or injury resulting from smoke. The limitation on liability does not apply where the nuisance or damage results from the negligent or improper conduct of the prescribed burning.

The act sets forth the guidelines for a prescribed burning. It requires that a prescription for a prescribed burning must be prepared by a certified prescribed burner and be filed with the Division of Forest Resources prior to the burn. A certified prescribed burner is an individual who has successfully completed a certification program approved by the Division of Forest Resources. G.S. 113-60.41(1). The prescription shall include:

- The landowner's name and address.
- A description of the area to be burned.
- A map of the area.
- An estimate of the fuel tonnage in the area.
- The objectives of the prescribed burning.
- A list of acceptable weather conditions for the burning.
- The certified burner responsible for the burning.
- Summaries of the methods used to start, control, and extinguish the burn.
- Provision for reasonable notice to homes and businesses in the area.

The prescribed burning must be conducted by the certified prescribed burner who shall be present on site and in charge throughout the burn. An exception to this provision allows a landowner to conduct the prescribed burning when the forestland acreage to be burned is less than 50 acres and the landowner conducts the prescribed burning according to a prescription prepared by a certified prescription burner.

The landowner or his agent must obtain an open burning permit from the Division of Forest Resources. The prescribed burning also must be conducted in accordance with the terms of the open burning permit, all State air pollution control statutes, local open burning ordinances, the voluntary smoke management guidelines set by the Division of Forest Resources, and any rules the Division adopts to implement this act.

The terms of this act are not applicable if the Secretary of the Department of Environment and Natural Resources has cancelled burning permits or prohibited all open burning.

The act becomes effective January 1, 2000. (BR)

Funds for Agricultural Research

S.L. 1999-172 (HB 1009) increases the amount that may be assessed on fertilizers and feed to provide funds through the North Carolina Agricultural Foundation for agricultural research. Under current law, farmers may, by referendum held among them, levy on themselves an assessment of ten cents per ton on fertilizers, commercial feed, and their ingredients. The assessment is collected by the Department of Agriculture from the manufacturers and remitted to the North Carolina Agricultural Foundation, which then disburses the funds for the purposes delineated in its charter. The governing boards of the North Carolina Farm Bureau Federation, The North Carolina State Grange, and the North Carolina Agricultural Foundation must file a petition for the referendum with the Department of Agriculture, which then authorizes the referendum. Two-thirds of the eligible farmers participating in the referendum must vote in favor of the assessment for it to be collected. Farmers who are dissatisfied with the assessment may demand a refund in writing from the North Carolina Agricultural Foundation. The last increase in the amount of the assessment was made in 1981, from five cents to ten cents. The act allows farmers to increase the amount of the assessment from ten cents to fifteen cents.

The act became effective June 9, 1999; however, the increased assessment may not be levied or collected before January 1, 2001. (BR)

State Budget Study of Agriculture Loan and Grant Programs

S.L. 1999-237, Sec. 13.1 (HB 168, Sec. 13.1) directs the Office of State Budget and Management to study all private and public farm loans and grant programs available through the State. The Office of State Budget and Management shall report its findings and recommendations not later than May 1, 200 to the Fiscal Research Division.

This section became effective July 1, 1999. (BR)

Southern Dairy Compact Commission Funds

S.L. 1999-237, Sec. 13.3 (HB 168, Sec. 13.3) directs that certain funds appropriated to the Department of Agriculture and Consumer Services be used for the start up costs of the Southern Dairy Compact Commission (Commission). The funds would be placed in a nonreverting reserve within the North Carolina Department of Agriculture and Consumer Services. No distributions would be made from the fund unless Congress ratifies legislation authorizing the operation of the Commission. The State and the Commission must enter into an agreement that includes the following:

- The administrative headquarters of the Commission shall be located in North Carolina.
- All funds disbursed from the reserve shall be repaid to the State plus interest from revenue collected by the Commission.
- The Commission shall issue notes to the State in the amount of funds disbursed.
- Prior to disbursement, the Commission shall itemize the needs to be served by the requested disbursement.

The contract between the State and the Commission shall not prevent another participating state from providing part or all of the start-up costs. Sums repaid under the contract shall be credited to the General Fund. Any funds not disbursed by the end of the term of the contract shall revert at the end of that fiscal year. If Congress fails to ratify the Compact by June 30, 2001, all funds in the reserve shall revert to the General Fund.

This section became effective July 1, 1999. (BR)

Agricultural Tourism Signs

S.L. 1999-356 (SB 07) directs the Department of Agriculture (Department) to provide directional signs on major highways leading to agricultural facilities that promote tourism by providing tours and on-site sales or samples of North Carolina agricultural products. To be eligible for a sign, the agricultural facility must be open at least four days a week, ten months of the year. The Department may assess the facility the actual reasonable costs of the sign and its installation.

The act became effective July 22, 1999. (BR)

Cotton Gins, Cotton Warehouses, Cotton Merchants

S.L. 1999-412 (HB 1010) directs all cotton gins, cotton warehouses, and cotton merchants to register with the Commissioner of Agriculture before engaging in business. A cotton warehouse is an enclosure in which producer-owned cotton is stored or held for longer than 48 hours. A cotton merchant is a person who buys cotton for the purpose of resale, or acts as a broker or agent for the producer. The term does not include persons who buy cotton for their own use. Cotton gins, cotton merchants, and cotton warehouses are required to register with the Department of Agriculture by July 1 of each year. The annual fee for registration is $25.00. In addition, cotton warehouses that are not licensed and bonded under the United States Warehouse Act must submit a bond in the amount of $300,000.

Cotton gins, cotton warehouses, cotton merchants, cotton cooperatives, and cotton associations are required to keep records of producer-owned cotton transactions for seven years and may not dispose of the cotton without consent from the producer. Operators of cotton gins must give the grower a document showing the bale number and weight for each bale. The document must be provided within 48 hours of the cotton being ginned. Violations of these requirements are grounds for denial, suspension, or revocation of registration. Operation without registration is punishable as a Class 2 misdemeanor.

The act becomes effective January 1, 2000. (BR)

Structural Pest Control Amendments

S.L. 1999-381 (HB 1233) makes a number of amendments to the Structural Pest Control Act, Article 4C of Chapter 106 of the General Statutes. Structural pest control is the control of household pests and wood destroying insects. It includes the inspection, identification, and use of pesticides and other substances to eradicate or control pests in household structures, commercial buildings, and other structures and outside areas.

The act clarifies the powers and duties of the Commissioner of Agriculture (Commissioner) and the Structural Pest Control Committee (SPCC) with respect to the administration of the structural pest control law. It provides that the Commissioner shall have the power to:

- Administer and enforce the provisions of the Act and related rules.
- Assign administrative and enforcement duties.
- Direct the work of the employees and personnel assigned to the SPCC.
- Develop proposed rules and programs for consideration for adoption by the SPCC.
- Monitor and evaluate existing programs and report on these to the SPCC.
- Attend and keep records of the meetings of the SPCC.
- Perform other duties assigned by the SPCC.

The SPCC is given the authority to:

- Adopt rules and make policies.
- Issue, deny, suspend, revoke, modify or restrict licenses.
- Report annually to the North Carolina Board of Agriculture.

The act grants to the SPCC a larger role in the selection and oversight of the Director of the Division of Structural Pest Control. The act provides that the Director shall be chosen by the Commissioner from a list of nominees provided by the SPCC. The Director's duties are to be set by the Commissioner in consultation with the SPCC and the Director is responsible to both the Commissioner and the SPCC for the operation of the Division.

The act also makes two substantial changes regarding prohibited acts. The first change provides some flexibility to persons who wish to engage in the structural pest control business. Previously, a person had to be licensed in order to engage in the structural pest control business. The act allows a person to advertise, engage in, or supervise work in any phase of structural pest control, or otherwise act in the capacity of a structural pest control licensee if the person either is licensed or employs a licensee as a full time regular employee responsible for each phase of structural pest control. The second change allows a licensee to establish branch offices, the maximum number of which is to be set by the SPCC, but in no event fewer than two branch offices in addition to a home office.

Licensees are prohibited from establishing more branch offices than are allowed by SPCC rules and must supervise the work performed out of an office under the license's management. No person or company may use a licensee's license unless the licensee is a full-time, regular employee. A licensee may not use prohibited materials or devices in an unapproved manner. Finally, it is unlawful for a licensee to use or supervise the use of a restricted us pesticide for which the licensee is not licensed.

The SPCC may refuse to allow a license applicant to sit for an examination for the following reasons: violations regarding the operation and supervision of branch offices, convictions of certain felonies, and convictions for crimes involving moral turpitude. The act also allows the SPCC to grant an additional 90 days during which a structural pest control business may operate without a licensee assigned to it in the event of the death or disability of the licensee.

The act curtails the commercial use of any pesticide, material, or device where the SPCC has requested information from the manufacturer or registrant but that request has been denied. These pesticides and other materials may only be used by an individual applying the material on the individual's own property. The SPCC may adopt rules that would require manufacturers and registrants of pesticides and other materials to provide efficacy data and other technical information on the products. The Division and the SPCC are not required to disclose confidential information provided under these rules.

The Division has discretion regarding the number of inspections it conducts of work done by licensees. The SPCC and the Commissioner are not required to initiate criminal or administrative proceedings for minor violations if the SPCC or the Commissioner determine that the public interest would be adequately served by written warning. The SPCC may impose a civil penalty for certain violations. The act also raises certain fees.

The act became effective October 1, 1999. (BR)

Wildlife and Boating

License Suspension/Baiting

S.L. 1999-120 (HB 236) amends G.S. 113-291.1(b)(2) regarding prohibitions on the manner of taking wild birds and animals. The act allows the use of electronic calls in hunting coyote. It makes it unlawful to take wild turkey from an area where bait has been placed until ten days after the bait has been removed or consumed. Finally, it corrects an improper cross-reference in the statute regarding the unlawful taking of bear or wild boar using bait. The incorrect citation referenced wild turkey, and not bear, and provided for a Class 2 misdemeanor and a $250 fine. The act changes the citation, making the unlawful taking of bear a Class 1

misdemeanor with a $2,000 fine. It also adds the unlawful taking of bear or wild boar with bait to the list of offenses that result in a two year suspension of a hunting license.

The act became effective October 1, 1999. (BR)

Boat Agent Fees

S.L. 1999-248 (HB 237) increases the amount that authorized agents of the Wildlife Resources Commission may receive for handling various vessel transactions, and makes other changes to State boating laws to conform to changes in the United States Coast Guard's regulations.

The Wildlife Resources Commission (Commission) is charged with administering the Boating Safety Act. As a part of those duties, the Commission issues boat numbers, issues and renews vessel registrations, and handles transfers of ownership. The Commission may authorize persons (agents) to act on its behalf by handling these transactions and issuing various documents and decals. Agents are compensated for these services on a per transaction basis. The act increases the amount of compensation that authorized agents of the Commission may receive according to the following schedule.

Renewal of vessel registration	$1.25
Transfer of ownership & registration	$3.00
Issuance of new certificate of number and registration	$3.00
Issuance of duplicate registration	$0.50
Issuance, transfer, duplication, or lien recordation of vessel title	$3.00

The act rewrites the Commission's authority to establish administrative guidelines regarding agent qualifications, duties, methods to insure accountability, and security. The act provides for a penalty assessment of 25% of the issuing fee on all remittances made to the Commission after the 15th of the month following the month of the transaction.

The act increases the threshold from $100 to $500 for reporting a boating accident. The changes are consistent with recent Coast Guard regulations.

The act repeals the permit requirements for regattas, boat races, exhibitions and marine parades on waters of the State. This change is also made to align the State laws with Coast Guard regulations.

The act became effective July 1, 1999. (BR)

Waterfowl License Changes

S.L. 1999-339 (SB 323) makes a number of changes to the license laws for the hunting of waterfowl and increases the fees for a waterfowl hunting license and for a special swan hunting permit. Previously, an Annual Sportsman License allowed the hunting of all wild animals and wild birds, except migratory waterfowl. Comprehensive hunting licenses allowed the taking of wild animals, wild birds, and big game. Migratory waterfowl were not included in the comprehensive hunting licenses. The act adds the waterfowl hunting privilege to both the Annual Sportsman License and the Comprehensive hunting licenses. It also increases the cost of a Migratory Waterfowl Hunting License from $5 to $10 and increases the cost of a swan permit from $5 to $10. Applicants for a swan permit must provide proof to the Wildlife Resources Commission that they hold a valid North Carolina hunting license that includes waterfowl hunting privileges.

The act became effective July 1, 1999. (BR)

Personal Watercraft

S.L. 1999-447 (HB 1209) amends the State's boating safety laws by bringing the statutes governing the operation of personal watercraft (jet skis) into closer conformance with the recommendations of the National Association of State Boating Law Administrators (NASBLA). The act repeals the statewide statute regulating jet skis and applies statewide application of G.S. 75A-13.3, regulating the use of jet skis on the Upper Catawba River. The act:

- Prohibits the operation of a personal watercraft between sunset and sunrise.
- Sets a minimum age of 16 for operating personal watercraft. 12 year olds may operate a personal watercraft if they have completed a NASBLA approved boating safety course or are accompanied by a person 18 or older.
- Requires persons operating personal watercraft to wear a Type I, II, III, or V personal floatation device.
- Prohibits towing a person behind a personal watercraft, unless there is an observer in addition to the operator or a rear view mirror. The total number of persons being towed and onboard may not exceed the manufacturer's load limit.
- Prohibits activities constituting reckless operation. These activities are expanded to include operating at greater than no wake speed within 100' of a moored or anchored vessel, the shore, a dock, a marked swimming area, swimmers, surfers, and anglers. Personal watercraft operators are required to observe the "rules of the road" and may not follow another vessel too closely.
- Requires boat liveries that rent personal watercraft to carry liability insurance in the amount of $300,000.

Local governments may adopt stricter regulations, but must post signs to notify boaters of the more stringent rules.

Violation of the act by a person under the age of 16 is an infraction. Boat liveries that fail to carry the required insurance are guilty of a Class 2 misdemeanor and subject to a fine not to exceed $1,000.

The act becomes effective December 1, 1999, and applies to acts committed on or after that date. (BR)

Major Pending Legislation

Tobacco and Health Trust Funds

HB 1431 would create two trust funds to receive the remaining 50% of the Phase I tobacco settlement funds. One fund would benefit health interests and the other would benefit tobacco producers, allotment holders, and persons engaged in tobacco-related businesses. During the first five years, this bill would also recapture much of the other 50% of the Phase I funds that were tentatively assigned to a nonprofit corporation to be used to assist tobacco-dependent and economically-affected communities (See S.L. 1999-02, SB 06 above). The effect is to "front load" the tobacco and trust funds so that they would receive more of the Phase I settlement funds in the first five years and less in the ensuing years. The overall distribution over the first 25 years would still remain as provided in S.L. 1999-2: 50% to the nonprofit corporation, 25% to the health trust fund, and 25% to the tobacco trust fund. This bill has passed the House and is pending in the Senate. (LJ)

N.C. Health and Wellness Trust Fund

SB 969 would create a health trust fund and would distribute 25% of the Phase I settlement monies to the fund. This bill has passed the Senate and is pending in the House. (LJ)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Part II, Section 2.1 (6)(b and c) authorizes the Legislative Research Commission to study the following:

- The adverse impact of fire ants on health and the environment and the feasibility of increasing control and eradication efforts.
- The use of imported pesticides, marketing, the impact of apple imports and other issues.

These sections became effective July 1, 1999. (BR)

Chapter 2
Children and Families

Susan Hayes (SH), Jo McCants (JM)

Enacted Legislation

Safe Families Act

S.L. 1999-23 (SB 197) makes several changes to the laws regarding domestic violence. Effective February 1, 2000, and provided a federal grant is received to cover the costs of implementation, all protective orders issued or registered in North Carolina shall be entered into the National Criminal Information Center (NCIC) system to be placed into the National Protective Order Registry. Also effective February 1, 2000, the act amends the full faith and credit provisions to specify the procedure by which this State gives full faith and credit to out-of-state orders. Orders do not have to be registered to be enforced. When enforcing an order, a law enforcement officer may rely on a copy of the order and a statement by the victim that the order remains in effect. Even though registration is not required, the person holding an order may register it by filing it with the clerk of superior court. No notice is given to the defendant at the time of registration. The clerk sends a copy of the registered out-of-state order to the sheriff for entry into NCIC. Effective December 1, 1999, it is a Class 2 misdemeanor for knowingly making a false statement to a law enforcement agency or officer that a protective order remains in effect.

Effective February 1, 2000, the current mandatory arrest requirement for violation of a protective order is repealed. Effective December 1, 1999, a similar mandatory arrest requirement is enacted where the defendant knowingly violates certain provisions of a protective order.

Effective December 1, 1999, it is a Class A1 misdemeanor to violate in North Carolina a valid protective order issued in another state. The act also eliminates the current provision of law that allows law enforcement officers not to respond to a request for assistance in a domestic violence situation when multiple complaints have been made within a 48-hour period. It also broadens the warrantless arrest statutes to include certain assaults when they occur between persons who have a personal relationship and to include the violation of a protective order as an offense for which a warrantless arrest may be made. (SH)

Child Care Law Corrections

S.L. 1999-130 (HB 287) makes several technical and clarifying changes to the child care statutes in Chapter 110. The act clarifies the Child Care Commission's (Commission) authority to require a building inspection when an initial license is requested for a child care facility. The act requires that any person who is 16 or 17 years old and who will be counted toward meeting the staff-child ratio, must be supervised by a credentialed staff person who is at least 21 years of age. This requirement does not apply to religious-sponsored childcare facilities. The act exempts churches that provide drop-in or short-term child care from having to notify the Department of Health and Human Services (Department) of their existence and the requirement that a notice be posted within the facility stating that the facility is not licensed or regulated by the Department. In addition, this act clarifies the law by providing that the State may not determine the training or curriculum offered in any religious-sponsored child care facility.

Session Law 1997-506(4b) is repealed, thereby removing the July 1, 1999, sunset on the provision that allows the Commission to adopt a voluntary enhanced program standard that reflects a higher quality child care than the mandatory standards. The enhanced program standards address staff-child ratios, staff qualifications, parental involvement, operational and

personnel policies, developmentally appropriate curricula, and facility square footage. The act also removes the provision that prohibited the Department and the Commission from promoting or requiring the utilization of training materials, curriculum, or policy developed or provided by the National Association for the Education of Young Children or the National Institute for Early Childhood Professional Development. However, the act makes it clear that the Department and the Commission must allow individual facilities to make curriculum decisions and may not require the standards, policies, or curriculum of any single accrediting child care organization.

The act became effective June 4, 1999. (JM)

Family Law Arbitration Act

S.L. 1999-185 (HB 495) enacts a new Family Law Arbitration Act. The act permits, by agreement of all parties, the binding arbitration of all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on a substantial change of circumstances related to alimony, child custody, and child support. The act is modeled after the Uniform Arbitration Act and the International Commercial Arbitration and Conciliation Act. The act requires all agreements to be written and made either during or after the marriage. The act sets forth the manner in which arbitrators are selected and the procedure for the actual arbitration. There are also provisions for interim relief that may be granted by the court pending the outcome of the arbitration.

The act became effective October 1, 1999. (JM)

Enhance Child Welfare Services

S.L. 1999-190 (HB 262) amends various sections of the current law to strengthen the State's child protection laws and to reduce barriers that prevent timely adoptions of children.

The act amends the definition of "caretaker" to include any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services (DHHS). This expansion of the definition makes it clear that allegations of abuse or neglect of a child by employees or volunteers of a division, institution, or school operated by DHHS must be investigated by the local department of social services (DSS).

The act provides that the director of the local DSS is responsible for investigating any death due to maltreatment of a child who is in an institutional setting such as a residential child care facility or an educational facility. The local DSS must also investigate any report of suspected abuse, neglect, or dependency of a child who is in an institutional setting. The director of the local DSS is required to determine if other children in the facility are in need of protective services or removal because of the actions of the alleged perpetrator.

The act requires every local DSS to pay at least the minimum monthly standard graduated foster care and adoption assistance rates for eligible children. The current minimum monthly standard graduated foster care and adoption assistance rate for eligible children is $315 for children ages 0-5, $365 for children ages 6-12, and $415 for children age 13 and older.

The act provides that the findings of the State Child Fatality Review Team are not admissible as evidence in any civil or administrative proceedings against individuals or entities that participate in child fatality reviews.

The act also adds Article 39, Interstate Compact on Adoption and Medical Assistance, to Chapter 7B of the General Statutes. It authorizes the Secretary of DHHS to enter into interstate compacts and agreements with out-of-state agencies for the protection of children on behalf of whom adoption assistance is being provided by DHHS, and to provide procedures for interstate adoption assistance payments, including payments for medical services. Payments for medical assistance would apply only to medical assistance for children under an adoption assistance agreement from a state that has entered into a compact with North Carolina. The other state

must also provide medical assistance to children with special needs under an adoption assistance agreement made by North Carolina.

The provision authorizing the Secretary of DHHS to enter into interstate compacts and agreements is effective October 1, 1999. The remaining provisions of the act became effective on June 18, 1999. (JM)

"Family Friendly" UI Exception

S.L. 1999-196 (HB 277). See **Insurance.**

Uniform Child-Custody Act

S.L. 1999-223 (HB 494) repeals the Uniform Child-Custody Jurisdiction Act (UCCJA) and enacts the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA is based on a uniform state law recommended by the National Conference of Commissioners on Uniform State Laws. The UCCJEA will clarify decisions that have resulted from differences between the UCCJA and the federal Parental Kidnapping Prevention Act. The UCCJEA will appear as Article 2 to Chapter 50A of the General Statutes.

Proceedings. The act expands the definition of the child custody proceedings. Adoptions, juvenile delinquency, and contractual emancipation are specifically excluded. Indian tribes and foreign countries are recognized as "states" where the tribe or the country acts in substantial conformity with the act.

Initial Jurisdiction. The act gives priority to home state jurisdiction, and makes significant connection jurisdiction secondary to home state jurisdiction. A court may only exercise significant connection jurisdiction if the home state declines jurisdiction on inconvenient forum or misconduct grounds, or if there is no home state. A child's absence from the state does not defeat home state jurisdiction if a parent or a person acting as a parent continues to live in the state.

Modification Jurisdiction. Exclusive continuing jurisdiction continues in a court that has made a custody determination consistent with the UCCJEA until: neither the child, the child and a parent, or the child and a person acting as a parent have a significant connection with the state and substantial evidence concerning the child is no longer available in the state; or the child, parents, and any person acting as a parent no longer live in the state. Another state may modify a decree only if the decree state no longer has exclusive continuing jurisdiction or the decree state has declined exclusive continuing jurisdiction. Courts have temporary emergency jurisdiction over a child who is in the state and has been abandoned, or an emergency makes it necessary to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. Any order under this provision is temporary until the appropriate state can enter a permanent order.

Declining Jurisdiction. A court with initial jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction may decline jurisdiction based on an inconvenient forum. The issue may be raised on the court's own motion, the motion of a party, or at the request of another state. The parties are allowed to submit information in support of the motion and the court must consider all relevant factors, including whether domestic violence has occurred and is likely to continue in the future, and which state can best protect the parties and the child. Attorneys' fees and expenses are no longer recoverable under this section. A court must decline to exercise jurisdiction if it has jurisdiction because a person seeking to invoke it has engaged in unjustifiable conduct. There are three exceptions:

- The parents and all persons acting as parents acquiesce in the exercise of jurisdiction.
- Another court defers to this court on inconvenient forum grounds.
- No other court would have jurisdiction.

Judicial Communication and Cooperation. North Carolina courts are authorized to communicate with a court in another state about any proceeding arising under the act. Testimony may be taken in another state when a party, the child, or witnesses are located out-of-state. Courts may seek assistance from, or give assistance to, a court of another state, including holding an evidentiary hearing, ordering a person to produce or give evidence, ordering a custody evaluation, and ordering a party or any person having physical custody of the child to appear in the proceeding with or without the child.

Pleadings. Under the act, certain information must be submitted to the court in the first pleading or attached affidavit to allow the court to determine its jurisdiction. The required information includes the child's present address, as well as the present address of the persons with whom the child lives. The court may stay the proceeding until the information is provided. A court must seal and may not disclose identifying information to the other party or to the public, if the party under oath alleges in an affidavit or pleading that disclosing the information would jeopardize the health, safety, or liberty of a party or child.

Interstate Enforcement. North Carolina courts must recognize and enforce child-custody determinations made in substantial conformity with the act or made under factual circumstances meeting the jurisdictional standards of the act. Custody determinations that are entitled to enforcement include temporary emergency orders, foreign custody orders, tribal court orders, registered orders, and the custody and visitation portions of a domestic violence civil protection order, provided there is compliance with the jurisdiction and notice provisions of the act. An order for return under the Hague Child Abduction Convention is also entitled to enforcement. The act creates a registration process to secure an order confirming another state's custody order. A request for registration may be accompanied by a request for enforcement. A court may issue a temporary order enforcing a visitation schedule made by a court of another state. Permanent changes in the order may only be made by a court that has jurisdiction to modify the order. The act establishes an expedited procedure for the enforcement of child-custody determinations. It provides for an enforcement hearing within twenty-four hours of service. The hearing may result in an order authorizing the petitioner to take immediate physical custody of the child unless the respondent establishes one of the defenses specified in the statute. If the order has not been previously registered those defenses are: (1) the issuing court did not have jurisdiction to make the order; (2) the respondent did not receive notice in accordance with the act; and (3) the order has been vacated, stayed, or modified. If the order has been registered, only the third defense may be asserted. In order to protect the child and to secure the child's presence in the jurisdiction for an enforcement hearing, the court may issue a warrant to take physical custody of a child upon a finding that the child is imminently likely to suffer serious physical harm or be removed from the state. At the request of the prosecutor or other public official, prosecutors, other designated public officials, or law enforcement officers, may take any lawful action to locate a child or a parent. All direct expenses and costs incurred by the prosecutor and law enforcement officers may be assessed against a nonprevailing respondent.

The act became effective October 1, 1999. (JM, SH)

Child Welfare System Pilots

S.L. 1999-237, Sec. 11.27 (HB 168, Sec. 11.27). **See Health and Human Services.**

Child Welfare System Improvements

S.L. 1999-237, Sec. 11.28 (HB 168, Sec. 11.28). See **Health and Human Services.**

Educational Program for Parents Who Are Parties to a Custody or Visitation Action

S.L. 1999-237, Sec. 17.16 (HB 168, Sec. 17.16) establishes within the Administrative Office of the Courts (AOC) a program to educate and sensitize separated or divorcing couples with children about the needs of their children during and after the separation and divorce process. The court must order participation in the educational course if it finds that significant parental conflict has adversely affected the children and the children's best interests would be served by the party's or parties' participation in the course. The AOC must have the program in each of the judicial districts with a family court no later than January 1, 2000.

The program must include:

- A course designed to inform the parents of the impact on the children of the parents' separation, custody, or visitation action, the parents' relationship with one another, the family's relationship, and the couple's financial responsibilities for the children.
- An administrative plan for the implementation of the program in all judicial districts with a family court pilot program.
- Identification of course providers with whom the AOC would contract to make courses available at reasonable times and for reasonable fees, and to ensure that courses will be available with sufficient regularity to meet the needs of the judicial district in which the program is offered.

The AOC must report to the General Assembly no later than March 1, 2001, on the program. An interim report must be made as a part of the family court pilot program report.

This section of the budget act became effective July 1, 1999. (JM)

Establish Domestic Violence Commission

S.L. 1999-237, Sec. 24.2 (HB 168, Sec. 24.2) establishes within the Department of Administration a Domestic Violence Commission (Commission). The Commission will consist of 39 members appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House.

The Commission has the following duties:

- Recommend to the General Assembly a "Safe Families Act" that promotes victim safety and accountability of perpetrators.
- Develop and recommend domestic violence training initiatives for law enforcement, judicial personnel and advocates.
- Develop and recommend to State agencies training in the areas of child protection, education, employer/employee relations, criminal justice, and subsidized housing.
- Provide information to private entities that provide services and support to domestic violence victims.
- Design, coordinate, and oversee a statewide public awareness campaign.
- Design and coordinate improved data collection of domestic violence crimes committed in this State.
- Research, develop, and recommend proposals on how to assist domestic violence victims and how to prevent domestic violence in this State.

The Commission must report its findings, recommendations, and legislative or administrative proposals to the General Assembly by April 1 of each year. However, if the Commission intends to recommend the adoption of a "Safe Families Act", the Commission must report its legislative proposal to the General Assembly on or before April 1, 2000.

This section of the budget became effective July 1, 1999. (JM)

Threats Against Children/Spouse

S.L. 1999-262 (SB 956). See **Criminal Law**.

Gifts By Guardians

S.L. 1999-270 (SB 1003). See **Civil Law**.

Child Care Subsidy Fraud

S.L. 1999-279 (HB 304) creates a specific offense and punishment for fraudulent misrepresentation involving child care subsidies. A provider or recipient of child care subsidies, or anyone who claims to be a provider or recipient, commits the offense of fraudulent misrepresentation if the person makes a false statement or representation regarding a material fact, or fails to disclose a material fact; and as a result of the false statement or omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy.

Childcare subsidy means the use of public funds to pay for day care services for children. Under the act, if the fraudulent misrepresentation involves a child care subsidy in an amount less than $1,000, the offense is a Class 1 misdemeanor. If the amount involved exceeds $1,000, the offense is a Class I felony.

The Department of Health and Human Services is required to allow each local purchasing agency to retain as an incentive bonus the actual amount of child care fraud and overpayment claims collected by the local purchasing agent. The local agency must use at least 75% of the incentive bonus to purchase subsidized childcare. The agency may use up to 25% of the incentive bonus to improve program integrity.

The act becomes effective December 1, 1999, and applies to offenses committed on or after that date. (JM)

Enhance Child Support Enforcement

S.L. 1999- 293 (HB 302) amends various statutory provisions that relate to child support enforcement. The act provides that a written acknowledgment of paternity executed by a putative father and accompanied by a written affirmation of paternity sworn to by the mother of a child has the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation.

The act requires that courts impose one or more of the available sanctions when a noncustodial parent has been held in contempt for failure to pay child support on three or more occasions. The sanctions include the revocation of a noncustodial parent's drivers license or recreational license, and directing the Department of Motor Vehicles to refuse to register the noncustodial parent's vehicle. Prior to the effective date of this act, the court had the discretion to impose any of these sanctions. In addition, this act requires that any delinquency be paid in full within a reasonable period of time with an immediate initial payment of 5% of the delinquency or $500, whichever is less.

All new and modified child support orders will require the noncustodial parent to make monthly support payments, due and payable on the first day of each month. Prior to the effective date of this act, child support payments could be made weekly, bi-monthly, or monthly. In addition, when establishing or modifying a child support order, a written signed statement or employee verification signed by a noncustodial parent is admissible evidence to establish the noncustodial parent's gross income.

The act allows the Employment Security Commission (ESC), upon receiving a certified child support order from another state, to withhold a maximum of 25% of a noncustodial parent's

unemployment benefits. When money is withheld by ESC, it is sent directly to the appropriate out-of-state child support enforcement agency for disbursement.

Child Support Enforcement (CSE) is authorized to establish a new child support enforcement mechanism that will allow CSE to locate and secure assets outside of the State that are owned by a noncustodial parent when the parent is delinquent in paying child support. This provision complies with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which required states to create the new enforcement mechanism.

CSE may enroll a child of a noncustodial parent in the North Carolina State Employees' Comprehensive Major Medical Plan when the child support order requires that the noncustodial parent provide medical insurance for the child or children receiving support. It has been the practice of State personnel agencies to cooperate with CSE by enrolling eligible children. However, this act makes it clear that the enrollment is required when there is an order requiring the noncustodial parent to pay medical insurance.

Child support payments must be submitted to the State Child Support Collection and Disbursement Unit (Unit) rather than the local clerk of superior court's office. The Unit is required to disburse all support payments.

The act became effective October 1, 1999. (JM)

Amend Time for Notice of Appeal

S.L. 1999-309 (SB 310). See **Civil Law**.

Marriage Licenses

S.L. 1999-375 (SB 1018) amends current law to allow a person who does not have a social security number and who is ineligible to obtain one, to obtain a marriage license if the person is otherwise qualified to receive a marriage license. The person applying for the marriage license must submit a sworn or affirmed statement to the register of deeds stating that the applicant does not have a social security number and is ineligible for one.

The act became effective August 4, 1999. (JM)

Juvenile Justice Technical Corrections

S.L. 1999-423 (HB 1216). See **Criminal Law**.

Guardian Ad Litem/Attorneys

S.L. 1999-432 (SB 25) amends current law to allow the appointment of a guardian ad litem representing a juvenile alleged to be abused, neglected, or dependent to continue until a permanent plan has been achieved for the juvenile and approved by the court. Prior to this act, the appointment terminated after two years. In cases where a nonattorney is appointed as a guardian ad litem, an attorney must be appointed and that appointment continues throughout the proceeding.

The guardian ad litem is authorized to conduct follow-up investigations to insure that the orders of the court are being properly executed, and must report to the court when the needs of the juvenile are not being met. The guardian ad litem is also authorized to obtain any information that, in the guardian ad litem's opinion, may be relevant to the juvenile's case and no privilege other than the attorney-client privilege may be invoked.

The act became effective August 10, 1999. (JM)

Juvenile Community Service

S.L. 1999-444 (HB 661). See **Criminal Law**.

Increase Child Abuse Penalty

S.L. 1999-451 (HB 160). See **Criminal Law**.

Effective Dates/Certain Hearings

S.L. 1999-456 (HB 162, Sec. 60) amends current law to correct an omission in the effective date provision of S.L. 1998-229 (HB 1720 -The Adoption and Safe Families Act). This act provides that the effective date clause applies to certain petitions and hearings in child abuse, neglect, and termination of parental rights cases on and after the July 1, 1999 effective date of the Adoption and Safe Families Act. This amendment makes it clear that the changes made to the sections of law amended by HB1720 and SB1260 (The Juvenile Justice Reform Act which enact some of the sections) apply in cases where the petition was filed before July 1, 1999, but the case is resolved afterwards.

This section of the act became effective August 13, 1999. (JM)

Chapter 3
Civil Law and Procedure

Brenda Carter (BC), Bill Gilkeson (WRG), Susan Hayes (SH),
Tim Hovis (TH), Robin Johnson (RJ), Esther Manheimer (EM),
Jo McCants (JM), Theresa Matula (TM), Walker Reagan (WR),
Steve Rose (SR), Ebher Rossi (ER)

Enacted Legislation
Evidence

Amend Rule 609: Impeachment Evidence

S.L. 1999-79 (HB 818) amends Rule 609 of the Rules of Evidence to expand the types of prior criminal records of a witness that are admissible for attacking the credibility of the witness. This act changes the test of what prior criminal convictions are admissible from crimes punishable by more that 60 days confinement to crimes that are either a felony or a Class A1, Class 1, or Class 2 misdemeanor.

The act becomes effective December 1, 1999, and applies to all actions and proceedings in courts of this State on or after that date. (WR)

Computerized Evidence Amendments

S.L. 1999-131 (SB 1021), as amended by S.L. 1999-456, Sec. 47 (HB 162, Sec. 47), allows records of any business, institution, department or agency of the government that are kept in the regular course of business and stored on any form of permanent, computer-readable media to be admissible into evidence in any judicial or administrative proceeding. The medium used to store the information must not be subject to erasure or alteration. These provisions also apply to documents produced by the Department of Revenue, the Office of the Governor, Treasurer, Auditor, Secretary of State, Attorney General, Adjutant General, the Department of Cultural Resources, counties, and cities.

The act becomes effective December 1, 1999. (SH)

Journalists' Testimonial Privilege

S.L. 1999-267 (SB 1009) provides that in any legal proceeding journalists have a qualified privilege against disclosure of the identity of any confidential or nonconfidential informant or the contents or source of any confidential or nonconfidential information obtained while acting as a journalist. To overcome the qualified privilege, a party must show by the greater weight of the evidence that the testimony or production sought: is relevant and material to the proper administration of the legal proceeding; cannot be obtained from alternate sources; and is essential to the maintenance of a claim or defense of the party seeking the testimony or production.

The court may only compel disclosure after a hearing and specific findings of fact. A journalist has no privilege against disclosure of any information, document, or item obtained as the result of the journalist's eyewitness observations of criminal or tortious conduct including any physical evidence or visual or audio recording of the observed conduct.

The act became effective October 1, 1999, and applies to information, documents, or items obtained or prepared while acting as a journalist on or after that date. (SH)

OSHA Witness Statements

S.L. 1999-364 (SB 370) permits an employer whom has been cited for Occupational Safety and Health Administration violations to obtain a copy of the official inspection report. Upon the request and at the expense of the requesting party, the Commissioner of Labor (Commissioner) shall furnish copies of the official inspection reports with the names and identities of the witnesses redacted. Upon request and payment, a person may obtain transcriptions of handwritten witness statements with the witness's identity redacted. At least ten days prior to the hearing, the Commissioner must, at the employer's request, furnish to the employer unredacted copies of the following:

- Witness statements the Commissioner plans to use at the hearing.
- Statements of witnesses the Commissioner intends to call to testify.
- Witness statements the Commissioner does not intend to use that might exonerate the employer.

The employer must request the statements no later than 12 days prior to the hearing. Requests made less than 12 days prior to the hearing shall be made available as soon as practicable.

The act became effective October 1, 1999. (TH)

Police Peer Counselor Privilege

S.L. 1999-374 (SB 995) provides a testimonial privilege for police peer support group counselors. Police counselors shall not be required to disclose information that was acquired in rendering services to a client law enforcement employee where the information was necessary to enable the counselor to render the services. The information shall be furnished only upon the authorization of the client. If the client is deceased, the client's estate may authorize disclosure. However, a judge may compel disclosure when necessary to the proper administration of justice. The privilege does not apply:

- When the peer support group counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of services.
- To communications made while the peer support group counselor was not acting in an official capacity.
- To communications related to a violation of criminal law.

Counselors will still have an obligation to report suspected child abuse or neglect and also report a disabled adult suspected to be in need of protective services. The privilege also is not grounds for excluding evidence of the abuse of a child or disabled adult.

The act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date. (SH)

Civil Procedure

Prosecution Bonds/When Required

S.L. 1999-106 (SB 693) removes the requirement that a judge, upon motion of the defendant in a civil action, must require the plaintiff to post a surety bond, provide a security deposit, or file a copy of an order authorizing the plaintiff to sue as an indigent. The act gives the judge the discretion to order one of those three things upon a showing of good cause.

The act became effective October 1, 1999. (WRG)

Amend Rule 55

S.L. 1999-187 (SB 921) amends Rule 55(b) (Default Judgments) of the Rules of Civil Procedure. This change allows the court to enter a default judgment without a hearing when the following conditions are met:

- The motion for a default judgment specifically notifies the other party that the court will decide the motion without a hearing unless the other party files, within 30 days, a written response stating the grounds for opposing the motion.
- The other party must fail to respond within the 30 days.

The defendant may still obtain an extension of time. However, if the defendant fails to answer within 30 days following the receipt of an extension, then the court may enter the default judgment without a hearing.

The act became effective October 1, 1999, and applies to causes of action commenced on or after that date. (RJ)

Appeal or Transfer from Clerk

S.L. 1999-216 (SB 246) clarifies the procedures governing the appeal of civil matters, special proceedings, and estate matters heard by clerks of superior court. The act repeals existing statutes and replaces them with a new Article 27A in Chapter 1 of the General Statutes. The new Article 27A consists of three new statutes governing the following:

- Appeals or transfers of rulings by a clerk in civil actions.
- Orders and judgments in special proceedings.
- Estate matters.

The act provides that in civil actions in which the clerk has jurisdiction, the power is held concurrently with a judge. If the civil action is required to be heard by a clerk, then the judge may hear only the matter appealed and remand the case for resolution by the clerk. Otherwise, a judge has the discretion to hear all matters in controversy in the civil action.

The act also requires that when a special proceeding is heard by the clerk, the proceeding must be transferred from the clerk to the trial court whenever an issue of fact is raised in the pleading. A party may appeal an order or judgment entered by a clerk in a special proceeding to the appropriate court for a hearing de novo.

The act also governs the appeal of estate matters. It authorizes the clerk to determine all issues of fact and law. Upon appeal, the judge determines whether the evidence supports the findings of fact and whether the findings of fact support the conclusions of law. The judge then determines if the order or judgment is consistent with the applicable law.

The act becomes effective January 1, 2000, and applies to orders or judgments entered on or after that date. (TH)

Certain Court Report Services

S.L. 1999-264 (SB 1055) amends Rule 28 of the Rules of Civil Procedure. Rule 28 governs persons before whom a disposition may be taken. The act provides that, unless the parties agree otherwise by stipulation, a deposition may not be taken before an independent contractor if the contractor or the contractor's principal is under a blanket contract for court reporting services with: an attorney of the parties; a party to the action; or a party with a financial interest in the action. Notwithstanding this disqualification, a party wishing to take the deposition by stipulation must disclose the disqualification in the notice of deposition. Any party opposing the proposed stipulation must give timely written notice of his or her opposition to all parties.

The act became effective October 1, 1999, and applies to depositions taken on or after that date. (TH)

Restructure Civil Contempt

S.L. 1999-361 (SB 170) amends the civil contempt statutes. The court must find that the person's non-compliance is willful before the court can hold a person in civil contempt. The term of imprisonment for a person found in civil contempt shall not exceed 90 days. However, if a person fails to purge himself or herself of the contempt within the term of imprisonment, the court may recommit the person. The recommitment may be for one or more successive terms of imprisonment, each not to exceed 90 days. The maximum term of imprisonment for the same act of disobedience or refusal to comply with a court order is 12 months, including both the initial term of imprisonment and any subsequent recommitment. The court, on its own motion, must hold a hearing before recommitting a person for civil contempt. A person's failure or refusal to purge himself or herself of contempt shall not be deemed a separate or additional act of disobedience or refusal to comply with the court order. However, if a person is found in civil contempt for failure to pay child support or failure to comply with a court order to perform an act that does not require the payment of a monetary judgment, the person may be imprisoned as long as the civil contempt continues without further hearing. A person found in civil contempt shall not be found in criminal contempt for the same conduct.

The act also provides that civil contempt may be initiated by motion of an aggrieved party. The aggrieved party may themselves show cause why the alleged contemnor should be held in civil contempt, rather than the alleged contemnor showing why he or she should not be held in civil contempt.

The act becomes effective December 1, 1999. (SH)

Structured Settlement Protection

S.L. 1999-367 (SB 746), as amended by S.L. 1999-456, Sec. 67 (HB 162, Sec. 67), creates the Structured Settlement Protection Act (act) to establish certain minimal requirements for the transfers or assignment of structured settlement rights to be considered valid and enforceable. The act provides that no transfer of structured settlement payment rights is effective unless the transfer has been authorized in advance by a court of competent jurisdiction or a responsible administrative authority. In order to approve the transfer the court must find that:

- The transfer complies with the law.
- The person assigning their rights in the settlement payments (the "payee") has received the statutory disclosures regarding the costs and effects of the transfer to the person receiving the rights to future payments (the "transferee").
- The transfer is in the best interest of the payee.
- The payee has received independent professional advice on the effects of the transfer.
- The transferee has given all relevant tax payer identification information to the person paying the settlement.
- The discount rate for determining the present value of the payment rights conforms to certain statutory requirements.
- Any brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee do not exceed 2% of the net amount payable to the payee.
- The transfer of structured settlement payment rights is fair and reasonable.

Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that

the court finds that the provisions of the act are satisfied. If the court authorizes a transfer of periodic payment rights, the structured settlement obligor shall be ordered to execute an acknowledgment of assignment letter on behalf of the transferee.

Not less than 30 days before the hearing on application for authorization of a transfer, the transferee must file with the proper court, and serve on any other government authority which previously approved the structured settlement, on all interested parties, and on the Attorney General, a notice of the proposed transfer and the application for its authorization. The Attorney General has standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer.

The provisions of the act may not be waived and any payee who has transferred structured settlement payment rights to a transferee without complying with the Act may bring an action against the transferee to recover actual monetary loss or for damages up to $5,000 for the violation, or both.

The act became effective on October 1, 1999 and applies to transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999. The act does not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. (SH)

Interest on Money Judgments

S.L. 1999-384 (SB 128) clarifies that, in an action other than one for breach of contract, that portion of a money judgment that is not designated as compensatory damages shall bear interest from the date of entry of the judgment. Compensatory damages bear interest from the date the action is commenced. The act also provides that, in an action on a penal bond, the judgment bears interest at the legal rate from the date of entry of the judgment.

The act became effective October 1, 1999, and applies to actions filed and bonds posted on or after that date. (TH)

Validate Certain Recorded Instruments

S.L. 1999-456, Sec. 12 (HB 162, Sec. 12) validates recorded instruments where seals have been omitted – for example, where a deed fails to contain the word "(SEAL)" next to the signature line as required under the recordation statutes. The statute was last amended in 1995 to cover documents recorded or registered through January 1, 1995.

Effective July 21, 1999, the act extends the statute to validate instruments recorded or registered through January 1, 1999. The act does not apply to pending litigation or to any instruments directly or indirectly involved in pending litigation. (BC)

Quick Take Notice of Appeal

S.L. 1999-410 (HB 644) requires that certain public condemnors who institute a condemnation proceeding in which title may vest immediately (quick-take proceedings) must include, along with the required notice of intention to file a condemnation complaint, a notice of the owner's rights, including the right to answer and to commence an action for injunctive relief. The notice must be set out conspicuously in at least 12-point bold type, and must include a statement advising the owner to consult with an attorney regarding the owner's rights.

The act became effective October 1, 1999 and applies to actions filed on or after that date. (BC)

Year 2000

Year 2000 Liability Limitations

S.L. 1999-295 (SB 1005) creates a new Article 35 in Chapter 66 of the General Statutes, Commerce and Business, to limit liability and damages arising from Year 2000 problems. For claims for damages based on Year 2000 problems against a person who has acted **with due diligence** in its operations to prevent the occurrence of a Year 2000 problem, no person shall be liable:

- To any person not in privity of contract.
- To any person who has not been given an express warranty.
- In the case of a trust, to any person who is not a beneficiary of the trust.
- For damages arising from delay or interruption of performance or delivery of goods or services in connection with a Year 2000 problem caused by a third party.
- For damages arising from delay or interruption of performance or delivery of goods or services in connection with a Year 2000 problem resulting from a third party's Year 2000 problem.
- For actions taken in an official capacity as an employee, officer or director.
- For consequential or punitive damages.

Also, the total damages allowed shall not exceed the actual damages that are the direct result of the Year 2000 problem. These limitations do not apply to an express warranty against damages resulting from a Year 2000 problem or to wrongful death claims or claims for injuries to person or property. It is prima facie evidence of due diligence if an insured financial institution or a public utility complies with relevant directives from State or federal regulators.

The act sets out a prelitigation mediation procedure to be followed prior to filing a civil action claiming damages for a Year 2000 problem. The request for mediation shall be filed by the person with the Year 2000 claim and shall be filed prior to bringing the civil action. The parties to the dispute may waive the mediation. The mediation shall be conducted pursuant to rules adopted by the Supreme Court.

The act became effective July 14, 1999, and applies to claims arising on or after that date. The act expires on December 31, 2004. (TH)

Year 2000 Consumer Protection Act

S.L. 1999-308 (SB 1074) allows a person against whom a claim or action is filed to assert an affirmative defense if the person's default, failure to pay, breach, omission or other violation that is the basis of the claim was caused by a Year 2000 problem. The person must show that the Year 2000 problem is associated with an electronic computing device that is not owned, controlled, or operated by the person, and that if it were not for the Year 2000 problem, the person would have been able to satisfy the obligations that are the basis of the claim. If the affirmative defense is established, the court must dismiss the claim without prejudice and the claim may not be reasserted for 60 days. If the affirmative defense is granted, the statute of limitations applicable to the claim is tolled for 90 days. The defense does not apply to transactions where a default has occurred before any disruption attributable to a Year 2000 problem, and does not apply to claims for personal injury or wrongful death. The granting of the affirmative defense does not relieve the person of the underlying obligation on which the claim is made.

An individual asserting an affirmative defense may dispute directly with a credit reporting agency any item of information in the individual's consumer file relating to the subject of the affirmative defense. At the request of the individual, a credit reporting agency operating in this State shall include the individual's statement of explanation regarding an item of information that

the consumer reporting agency denies is inaccurate or a statement concerning the content of the individual's consumer file.

The act became effective July 15, 1999, and expires October 1, 2000, except that any affirmative defense raised in a pending civil action pursuant to this act remains effective until the conclusion of that action. (SH)

Miscellaneous

Mediation Settlement in Writing

S.L. 1999-354 (HB 924) encourages the establishment and the widest possible use of community mediation centers by the courts and law enforcement officials. Community mediation centers are also referred to as dispute settlement centers and dispute resolution centers. The centers may receive referrals from courts, law enforcement agencies, and other public entities for the purpose of facilitating communication, understanding, reconciliation, and settlement of conflicts. The act amends current law to provide that the phrases "practice of law" and "practice of counseling" do not include the drafting of memoranda of understanding or mediation summaries by mediators at community mediation centers.

Evidence of statements made and conduct occurring during mediation at a community mediation center is not subject to discovery and is inadmissible in any proceeding in the action or other actions on the same claim. However, evidence that is otherwise admissible does not become inadmissible merely because it is presented or discussed during mediation.

A mediator cannot be compelled to testify or produce evidence in any civil proceeding concerning statements made and conduct occurring in mediation conducted by a community mediation center. In addition, a mediator cannot be compelled to testify or produce evidence in any criminal misdemeanor or felony proceedings concerning statements made and conduct occurring in mediation conducted by a community mediation center. However, the act allows a judge presiding over a trial of a felony to compel disclosure of any evidence unrelated to the dispute that is subject of the mediation if it is to be introduced in the trial or disposition of the felony and the judge determines that the introduction of the evidence may not be obtained from any other source.

The act became effective July 22, 1999. (JM)

Appointment of Successor Trustee

S.L. 1999-118 (HB 201). See **Property, Trusts, and Estates.**

Personal Representative Qualifications

S.L. 1999-133 (SB 525). See **Property, Trusts, and Estates.**

Foreclosure Notice

S.L. 1999-137 (HB 226) amends the foreclosure law. The holder of a mortgage must now provide confirmation that within 30 days prior to the notice of the foreclosure hearing being given, the noteholder had given by first-class mail written notice to the debtor of the amount of the principal and interest owed on the loan, together with the daily interest accruing on the outstanding balance, and other expenses owed by the debtor to the noteholder. The act also provides that a person giving the notice, other than the noteholder, may rely on written confirmation from the noteholder of the amounts owed. Any dispute between the noteholder

and the debtor over the mailing of the notice required by this act, or the accuracy of the notice, is not to be considered in a foreclosure hearing.

The act becomes effective January 1, 2000, and applies to foreclosure proceedings filed on or after that date. (WR)

New Lapse Statute

S.L. 1999-145 (SB 329). See **Property, Trusts, and Estates.**

SAVAN Exemption

S.L. 1999-169 (HB 975) provides the services rendered through the Crime Victims Rights Act and the Statewide Automated Victim Assistance and Notification System ("SAVAN") do not create a claim against the State or any of its subdivisions or instrumentalities. This measure also provides that a failure (or inability) to render services through SAVAN or the Crime Victim Rights Act is grounds for relief in any criminal or civil proceeding (except for suits for a writ of mandamus).

The act became effective June 14,1999. (ER)

Workers' Comp./Third Party Actions

S.L. 1999-194 (HB 980) gives judges discretion to determine the amount of an employer's lien in workers compensation cases. Employees who are injured on the job are covered by workers' compensation insurance. State law allows employers and workers' compensation insurers to be reimbursed for their payments to an employee when the employee is successful in obtaining a judgment or a settlement from a third party. This is accomplished by way of a lien.

This act gives a judge discretion to determine the amount, if any, of the employer's lien and also gives the judge discretion to allocate the costs of the third-party litigation to be shared between the employer and employee. In making these determinations, the judge is required to consider the following:

- The prospective amount of compensation that the employee will receive from the workers' compensation insurer or employer.
- The net recovery to the plaintiff.
- The likelihood of the plaintiff prevailing at trial or on appeal.
- The need for finality in litigation.

Any other factors the court deems just and reasonable in determining the appropriate amount of the employer's lien.

The act became effective June 22, 1999, applies to judgments or settlements entered against third parties on or after that date. (ER)

Charitable Nonprofit Notice

S.L. 1999-204 (SB 789) amends G.S. 55A-11-02, which governs mergers of and sales, leases, or exchanges of the assets of charitable or religious nonprofit corporations. The act expands the number of days from 20 to 30 that prior notice of a merger or disposition must be given. In the case of a disposition of assets, it lowers the threshold for which the notice requirements apply from "substantially all" to "a majority" of the assets of the corporation. The act allows the Attorney General (AG) to extend for an additional 30 days the time the AG has to review either transaction before the transaction can be finalized. It also requires the corporation to provide all information required by the AG to allow for a complete review of the transaction.

The act became effective October 1, 1999, and applies to notices given on or after that date. (RJ)

Unsolicited Commercial Electronic Bulk Mail

S.L. 1999-212 (SB 288), as amended by S.L. 1999-456, Sec. 8 (HB 162, Sec. 8) extends North Carolina's "long arm jurisdiction" statute to include senders of unsolicited electronic bulk commercial mail and makes the sending of unsolicited electronic bulk commercial mail unlawful. The act provides that the court has jurisdiction when there is injury to property within this State arising out of an act committed outside this State by the defendant, and at the time of the injury the defendant was sending unsolicited bulk commercial e-mail (commonly known as "spamming") in contravention of an electronic mail service provider's policies.

The act also creates the criminal offense of computer trespass. The offense occurs when a person uses a computer or computer network without authority and with the intent to do any of the following:

- Interrupt or disable a computer or computer network.
- Cause a malfunction.
- Alter or erase date.
- Cause injury to another person's property.
- Unlawfully copy data.
- Falsify electronic mail information in connection with the transmission of unsolicited bulk electronic mail.

Computer trespass would generally be punishable as a Class 3 misdemeanor where there is no property damage. The punishment for computer trespass is increased where there is damage to the property of another. If there is damage to the property of another valued at less than $2500 and the damage is caused by the person's violation of the act, the offense is a Class 1 misdemeanor. If there is damage to the property of another valued at $2500 or more caused by the person's violation of the statute, the offense is a Class I felony.

The act creates a civil cause of action and allows any person whose property is injured by computer trespass to sue for and recover any damages sustained along with the costs of the suit. If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person other than an electronic mail service provider may recover attorneys' fees and, in lieu of actual damages, may recover the lesser of $25,000 per day or $10 for each piece of unsolicited bulk electronic mail sent in violation of the statute. The injured person has no cause of action against the electronic mail service provider who merely transmits the unsolicited bulk electronic mail over its network. The injured electronic mail service provider may recover attorneys' fees and, in lieu of actual damages, may recover the greater of $25,000 per day or $10 for each piece of unsolicited bulk electronic mail sent in violation of the statute. Any civil action must be commenced within one year.

The act becomes effective December 1, 1999. (SH)

Filing of Foreign Agreements

S.L. 1999-260 (SB 192). See **State Government**.

Manufactured Home Law Restoration

S.L. 1999-278 (SB 654) provides that a landlord who leases manufactured home lots may not throw away, dispose of, or sell a manufactured home and its contents worth over $500 when the home remains on the landlord's lot after the landlord has been placed in lawful possession by the execution of a writ of possession. However, the landlord has a lien on the manufactured

home and the personal property abandoned by the tenant and may sell both the home and the personal property.

The act does the following: amends the landlord/tenant law to exempt a manufactured home valued at more than $500 and its contents from the description of personal property that a landlord may throw away, dispose of, or sell, if the home remains on the landlord's premises 10 days after receiving lawful possession by execution of a writ of possession.

G.S. 42-36.2(b) requires a landlord to release a tenant's personal property within 10 days of a landlord being placed in lawful possession by execution of a writ of possession, and upon the tenant's request. The act amends the subsection to provide an exception for the release of the property in cases where the disposition of a manufactured home worth more than $500 (and its contents) is at issue.

G.S. 42-36.2(d) provides that before the sheriff can remove a tenant's personal property pursuant to a writ of possession of real property or an order, the sheriff must give the tenant notice of the approximate time that the writ will be executed. The notice provides that failure to request possession of any of the property on the premises within 10 days of the execution may result in the property being thrown away, disposed of, or sold. The act amends current law by providing that the sheriff does not have to give notice that the manufactured home may be thrown away, disposed of, or sold in cases involving the lease of a space for a manufactured home.

The act also clarifies that a landlord who leases spaces for manufactured homes acquires a lien on the actual manufactured home 21 days after being placed in lawful possession by execution of a writ of possession, if the landlord has a lawful claim against the tenant. The landlord may enforce the lien by public sale after the lien has attached. The lien does not have priority over any security interest in the property perfected at the time the landlord acquires the lien. In addition, the landlord and tenant may enter into an agreement that the landlord will not obtain a lien on the manufactured home.

The act became effective October 1, 1999. (SR)

Amend Time for Notice of Appeal

S.L. 1999-309 (SB 310) amends the statutes governing the time when notice of appeal must be given in cases of termination of parental rights, emancipation of minors, and orders to transfer a juvenile to Superior Court. Prior law provided that notice of appeal must be given in open court at the hearing or in writing within 10 days after the hearing. The act changes the time in which written notice of appeal must be given, making it 10 days after the entry of the order, rather than 10 days after the hearing. It clarifies that the entry of these orders is treated procedurally the same as the entry of a judgment. The act also makes the notice of appeal changes in the statute relating to the determination of parental rights, and other conforming changes.

The act became effective October 1, 1999, and applies to actions filed on or after that date. (SR)

Contracts Continue/European Union

S.L. 1999-312 (SB 1143). See **Commercial Law**.

Major Pending Legislation

Right to Keep and Bear Arms Protection Act

HB 938 would prohibit a North Carolina local government from suing a firearms or ammunition maker or dealer for lawful activity. It would also prohibit the Attorney General from bringing such a lawsuit without the authorization of the General Assembly. The bill passed the House and is in the Senate. (WRG)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. 2.1(8)a. (HB 163, Sec. 2.1(8)a.) authorizes the Legislative Study Commission to study the issues raised by HB 1224, Expand Magistrates' Authority. The Study Commission may study whether or not magistrates' authority should be expanded for those magistrates who are licensed to practice law

This section became effective July 1, 1999. (EM)

New Independent Studies/Commissions

Civil Litigation Study Commission

S.L. 1999-395, Sec. 11.1(a). (HB 163, Sec. 11.1(a)) creates the Civil Litigation Study Commission, and directs the Commission to study a number of issues including:

- The practices and procedures that affect the speed, fairness, and accuracy with which civil actions are disposed of in the trial divisions.
- Devise and recommend improved practices and procedures that:
  - Reduce the time required to dispose of civil actions in the trial divisions.
  - Simplify pretrial and trial procedure.
  - Guarantee the fairness and impartiality with which the claims and defenses are heard and resolved.
  - Increase the parties' and public's satisfaction with the process of civil litigation.
- Raising the amount in controversy that determines the proper division for trial and court actions and allowing counsel fees as part of costs in certain civil actions.
- Requiring insurers to provide information prior to litigation, requiring policy provisions and policy limits upon written request, and giving an insurer who provides such information the option of initiating mediation with the person who sought the information.
- Allowing prisoners who suffer death or total and permanent disability to receive compensation under the Workers' Compensation Act based in the minimum wage.
- Public duty doctrine rules.

The Commission may report to the General Assembly and the Chief Justice by making an interim report no later than the convening of the 2000 Regular Session and shall make a final report no later than March 1, 2001.

This section became effective July 1, 1999. (EM)

Chapter 4
Commercial Law

Karen Cochrane-Brown (KCB), Robin Johnson (RJ),
Linwood Jones (LJ), Esther Manheimer (EM),
Walker Reagan (WR), Steve Rose (SR), Rick Zechini(RZ)

Enacted Legislation
Banking

Banking Law Revisions

S.L. 1999-72 (SB 939) makes several changes to the banking laws applicable to State charter banks. The act allows the stock of a bank held by a bank director in an individual retirement account or other retirement account over which the director has investment authority to count towards the $1000 of bank stock necessary to qualify as a director. The act also lowers, from three-fourths to one-half, the percentage of the bank board of directors required to be North Carolina residents. The act provides that the restriction on banks making loans to their own executive officers does not apply to loans made on the same terms and conditions that are available to all employees of the bank. The act also repeals the June 1, 1999 sunset on the reciprocity requirement for permitting de novo branches of an out-of-state bank in North Carolina to be created by the acquisition of an existing branch bank in the State.

The act became effective May 21, 1999. (WR)

Letters of Credit Collateral

S.L. 1999-74 (SB 417) adds letters of credit issued by Federal Home Loan Banks to the list of acceptable collateral the Local Government Commission may approve as collateral for local government funds on deposit with banks and other financial institutions.

The act became effective May 21, 1999. (WR)

Clarify Certain Contract Loan Fees

S.L. 1999-75 (SB 790) amends the law that limits fees and interest rate charges on loans. The act restricts to banks and savings institutions the right for a lender to charge up to 1/4 of 1% or fifty dollars, whichever is greater, for a loan origination fee or loan modification, renewal, extension or amendment fee. Other lenders will no longer be authorized to charge these fees.

The act became effective October 1, 1999. (WR)

Savings Institution Changes

S.L. 1999-179 (HB 219) makes technical changes to the law governing state-chartered savings and loan associations and savings banks. It also authorizes the Savings Institutions Administrator to increase the limit of commercial loans which savings banks may hold. The act makes these additional changes:

- Corrects an error in the definition of encumbered property in the Savings and Loan chapter which is relevant in determining what types of loans savings and loan

associations are authorized to make, by changing the word "encumbered" to "unencumbered".

- Repeals an existing provision relating to a state savings bank's status as an IRS qualified thrift institution that is no longer relevant since the federal law has been changed.

- Authorizes the Savings Institutions Administrator to increase the limit for commercial loans above the current statutory limit of 15% of the saving bank's total assets upon the written request of a savings bank. This act allows the Administrator to authorize an increase of that percentage above 15% and would eliminate the Administrator's authority to apply rules for lending or investing in commercial loans when less than 15% of the total assets of the savings bank are commercial loans. The only standard that the Administrator is required to consider in making this determination to approve a limit over 15% is the "commercial lending expertise of the management and the overall risk profile of the savings bank".

The act became effective June 14, 1999. (WR)

Contracts Continue/European Union

S.L. 1999-312 (SB 1143) adds Article 23 ("Continuity of Contract Under European Monetary Union") to Chapter 53 of the General Statutes. The new Article provides that existing contracts which refer to European currencies that have now or in the future will be replaced with the currency of the European Union, the "Euro", are still valid and enforceable despite the currency conversion. Where the currency in a contract is substituted or replaced by the Euro, the Euro shall be considered a commercially reasonable substitute and the substantial equivalent in value at the conversion rate calculated in accordance with regulations of the European Union. Where the currency was the European Currency Unit (ECU), the Euro may also be substituted. The original contract currency, if still legal currency, or the Euro, may be tendered in compliance with the contract. Performance under any contract will not be excused due to introduction of the Euro, tender of Euro in connection with an obligation under a contract, determination of the value of an obligation as provided in the Article, or calculation of an interest rate based on a currency replaced by the Euro. The act provides that references to ECU in a contract refer to Euro. The Article applies to all contracts, securities, and instruments, but the Article does not apply to the conversion of any other currency other than to currencies converted to the Euro.

The act became effective July 15, 1999 and applies to contracts entered into before, on, or after that date. (WR)

Prohibit Predatory Lending

S.L. 1999-332 (SB 1149), as amended by S.L. 1999-456, Sec. 41 (HB 162, Sec. 41), makes several changes in the law relating to mortgage loans. The act modifies the kinds and amounts of fees that may be charged to a borrower by a lender in connection with a home loan by:

- Allowing prepayment penalties as negotiated between lenders and borrowers except when the loan is a home loan of $150,000 or less, the borrower is a natural person, the loan is for personal or household purposes, and the loan is secured by a first mortgage. The limitations in this provision do not apply if preempted by federal law.
- Clarifying which fees may be charged at or before loan closing, upon modification, renewal, extension, or amendment of a loan and when the lender agrees to defer payment.
- Placing restrictions on "high cost home loans". These are loans in the amount of the lesser of the conforming loan limit set by the Federal National Mortgage Association or $300,000, made to a borrower for personal, family or household purposes,

secured by a manufactured home or a mortgage on the borrower's principal residence, and which meets one or more of three thresholds. The thresholds relate to interest rate, the total amount charged as points and fees, and prepayment fees. These loans are subject to certain limitations and prohibitions on their terms, which are designed to create a very high disincentive to making the loans. Violation of this provision is subject to remedies for an unfair or deceptive trade practice under Chapter 75 of the General Statutes or the remedies under Chapter 24 of the General Statutes (Interest), but not both.

The act also makes the following practices by lenders unlawful, when used in connection with a consumer home loan:

- Financing credit life, disability, or unemployment insurance or other life or health insurance other than for insurance where the premiums are paid monthly.
- The practice of "flipping", which is making a loan to a borrower that refinances an existing loan, unless there is reasonable tangible net benefit to the borrower.
- Encouraging a borrower to default on a loan prior to or in connection with the closing of a loan that refinances an existing loan.

The act directs the Legislative Research Commission to study the implementation of the act to see if it adversely affects the availability of credit and successfully reduces predatory lending. The Commission shall also study whether there are circumstances under which consumers would benefit from permitting a lender to finance credit insurance premiums.

The provisions relating to "high cost home loans" and restricting the financing of single premium credit insurance become effective July 1, 2000. The remainder of the bill became effective October 1, 1999 and applies to loans made or entered into, payments deferred, and loans modified, renewed, extended, or amended on or after that date. (KCB)

Business Organization

Amend Professional Corporation Act

S.L. 1999-136 (SB 620). See **Health.**

Allow Electronic/Telephonic Proxies

S.L. 1999-138 (SB 775) expressly allows a shareholder to appoint one or more proxies to vote the shareholder's shares or act on behalf of the shareholder by signing an appointment form. The existing law had implied but did not expressly state that more than one proxy could act on behalf of a shareholder. The act also allows a shareholder to appoint one or more proxies by photocopy, telegram, cablegram, or fax, and if permitted by the corporation, by electronic mail message, or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the shareholder. In the case of a public corporation, a shareholder may appoint one or more proxies by any kind of electronic or telephonic transmission, even if not accompanied by written communication, when circumstances exist so that the corporation may reasonably assume that the appointment was made or authorized by the shareholder. A similar provision was enacted for nonprofit corporations (see below).

The act became effective October 1, 1999. (LJ)

Electronic Proxies for Nonprofit Corporations

S.L. 1999-139 (SB 774) expressly allows a member of a nonprofit corporation to appoint one or more proxies to vote or act on the member's behalf by signing an appointment form. The

act allows the member to appoint the proxy by a photocopy, telegram, cablegram, or facsimile, and if permitted by the corporation, by electronic mail message or other form of electronic, wire, or wireless communication providing a written statement appearing to have been sent by the shareholder. A member may also appoint proxies by any kind of electronic or telephonic transmission, even if not accompanied by written communication, when circumstances exist so that the corporation may reasonably assume that the appointment was made or authorized by the member. A similar provision was enacted for business corporations (see above).

The act became effective October 1, 1999. (LJ)

Dissenters' Rights Amendments

S.L. 1999-141 (SB 426) amends the law that governs when a shareholder may dissent from certain corporate actions. The existing Business Corporation Act (Act) allowed shareholders to dissent from and obtain the fair market value of their shares in the event of certain corporate actions such as certain mergers, share exchanges, sale of substantially all assets, or material amendments to articles of incorporation. However, in 1997, the General Assembly amended the Act to remove the right of dissent from certain shareholders if the shares were listed on a *national securities exchange* or held by at least 2,000 record shareholders. This act further amends this exemption to provide that shareholders also cannot dissent if the shares are designated as a national market system security (NASD). (A national market system security is traded electronically and through telecommunications, not on a trading floor like a national securities exchange.) Neither the existing nor new exemptions from shareholder dissent rights apply when the articles of incorporation provide otherwise or when the shareholders are required under a merger plan or share exchange plan to accept fair market value in a form other than cash and/or certain shares.

The act became effective October 1, 1999, and applies to corporate actions to which shareholders may dissent that occur on or after that date. (LJ)

Amend Foreign Corporation Law

S.L. 1999-151 (SB 483) amends the Business Corporation Act (Chapter 55) and the Non-Profit Corporation Act (Chapter 55A) by eliminating the requirement that the corporate predecessor of a successor corporation must have a certificate of authority to do business in the State in order for the successor corporation to maintain an action in the courts of the State.

Under the present corporate laws, a corporation that is an assignee of another corporation cannot maintain a cause of action in this State unless the other corporation has obtained a certificate of authority to do business. This applies even though the successor corporation has obtained authority to do business in the State. Here is an example of how the previous law worked:

- Corporation A, an out-of-state company, lends money to a North Carolina resident to buy a car.
- Corporation A has not obtained a certificate of authority from the Secretary of State.
- Corporation A assigns the note to Corporation B which does have a certificate of authority to do business in the State.
- The person who borrowed the money defaults and Corporation B seeks to collect the debt in a North Carolina court.
- Corporation B will not be allowed to maintain its action until Corporation A obtains a certificate of authority to do business from the Secretary of State.

The amendments contained in this act would eliminate the requirement that Corporation A must obtain a certificate of authority to do business in the State in order for Corporation B to maintain an action in the courts of this State.

The act became effective October 1, 1999 and applies to causes of action or proceedings filed on or after that date. (SR)

Revised Limited Liability Company Act

S.L. 1999-189 (SB 660), as amended by S.L. 1999-369, Sec. 3.5(b) (SB 835, Sec. 3.5 (b)) and S.L. 1999-456, Sec. 50 (HB 162, Sec. 50), makes clarifying and operational changes to the Limited Liability Company Act in order to permit limited liability companies (LLCs) to have much of the same operational and management flexibility allowed other business organizations. The act does the following:

- Clarifies in part that one person may execute an operating agreement for a LLC whether or not the writing constitutes an agreement.
- Provides for the formation of an LLC when members have not been identified, by giving the organizers authority to act for the company in certain situations. Also permits members to be identified after the articles of organization are filed and provides that unless the articles of organization specify a latest date of dissolution, the company may continue to exist for an unlimited time.
- Provides for the title to property owned by a LLC to reflect the transfer of the property to a new entity when the LLC merges or consolidates with, or converts to, another entity.
- Permits greater flexibility in specifying when a person becomes a member a LLC. Also changes the law governing when a member may withdraw from the company to those times specified in the articles of organization or a written operating agreement.
- Provides that a LLC dissolves when it has no members, except that upon the death of the last member, the assignee or fiduciary of the last remaining member may become a member. It also authorizes the Attorney General to seek judicial dissolution of a LLC if it was created by fraud or continues to operate outside its authority after a warning by the Attorney General. Judicial dissolution is permitted when management is deadlocked and dissolution is necessary to preserve the company assets and protect the interest of the members.
- Amends the assumed name statute to permit a LLC to operate under an assumed name.

The act became effective June 18, 1999, applies to LLC's in existence or formed on or after January 1, 1999, and applies to actions commenced on or after October 1, 1999. (WR)

Charitable Nonprofit Notice

S.L. 1999-204 (SB 789). See **Civil Law and Procedure.**

Limited Partnership Law Changes

S.L. 1999-362 (SB 297) amends the law related to limited partnerships and clarifies the limit of liability of professionals in limited liability companies, registered limited liability partnerships, and professional corporations. The act also provides for registration of foreign limited liability partnerships and annual reports by registered limited liability partnerships and foreign limited liability partnerships. The act makes the following additional changes:

- Establishes that the legal residence of a limited partnership, a limited liability company, and a registered limited liability partnership is determined in the same manner as for a corporation.
- Amends the Professional Corporation Act (Chapter 55B) and the Limited Liability Company Act (Chapter 57C) to clarify that a shareholder, director, or officer of a professional corporation, or a member of a limited liability company, is not

individually liable for the professional malpractice of another person in the professional organization but would be personally liable for their own malpractice.

- Adds the definition of a "foreign limited liability partnership" to the Uniform Partnership Act (Chapter 59). This change is effective January 1, 2000.
- Amends the Uniform Partnership Act to clarify the liability of partners in a registered limited liability partnership (RLLP). Also clarifies that a partner in a RLLP is not individually liable for the professional malpractice of another partner in the RLLP, but would be personally liable for their own professional malpractice.
- Creates a new article for registered limited liability partnerships and makes other clarifying changes in this law for the creation, amendment, and designation of a RLLP. This change is effective January 1, 2000.
- Requires RLLP's and foreign limited liability partnerships to file annual reports with the Secretary of State in a fashion similar to the annual reports required of corporations, nonprofits, and limited liability companies. This change is effective January 1, 2000.
- Provides for the registration of a foreign limited liability partnership in a fashion similar to the registration of a foreign corporation, foreign nonprofit corporation, a foreign limited liability company, and a foreign limited partnership. This provision is effective January 1, 2000 and applies to foreign limited liability partnerships transacting business in this State on or after that date.
- Amends the Limited Partnership Act in Article 5 of Chapter 59 and makes numerous clarifying changes regarding limited partnerships.
- Deletes the liability of limited partners to third parties under certain circumstances and provides that the limited partner is not liable even if the limited partner participates in the management of the limited partnership.
- Allows for a limited partnership to amend the provisions for allowing a limited partner to withdraw. Also provides that in a limited partnership where no provisions are made for a limited partner to withdraw, the limited partner may not withdraw until the time for the dissolution and winding up of the limited partnership business.

Unless otherwise stated, the act became effective October 1, 1999 and generally applies prospectively to actions by covered organizations on or after that date. (WR)

Revise Law Governing Mergers

S.L. 1999-369 (SB 835), as amended by S.L. 1999-456, Sec. 52 (HB 162, Sec. 52), clarifies and conforms laws governing the mergers, consolidations and conversions among business corporations, nonprofit corporations, partnerships, limited partnerships, limited liability companies and foreign business entities. It also provides for a method for conversion of mutual insurance companies to stock insurance companies, and permits homeowner associations to refund excess dues and fees collected from association members.

The act also provides for a common, standardized form of merger, consolidation and conversion for business corporations, nonprofit corporations, limited liability companies, partnerships and limited partnerships. This permits different forms of entities to merge and convert into other entity forms. The standard provisions require a plan of merger or conversion adopted by the merging or converting entities, articles of merger or conversion filed with the Secretary of State, and defines the legal effects of the merger/conversion on title to real property, liabilities, pending actions, and the rights to succeed in interest. Provisions are also made for merger/conversions with foreign corporations, foreign nonprofits, foreign partnerships, foreign limited liability companies and other foreign entities.

Effective October 1, 1999, the act sets out the procedure for the conversion of a mutual insurance company to a stock insurance company. This type of conversion must be approved by the Commissioner of Insurance and must provide that the policyholder in a mutual insurance company will own the same proportionate share of a stock insurance company as the

policyholder owned in the mutual insurance company. This provision also insures that the officers, directors and employees of a mutual insurance company will not receive any separate compensation as a result of a conversion other than the compensation paid in the ordinary course of business.

The act amends the Nonprofit Corporation statute to permit a homeowners association that accumulate excess funds from its members, to distribute those funds to the members of the association in proportion to the fees collected from the members.

Unless otherwise stated, the act becomes effective December 15, 1999 and applies to mergers, consolidations and conversions effective on or after December 15, 1999. (WR)

Amend Professional Corporation Act

S.L. 1999-440 (HB 202) amends the Professional Corporation Act to permit stock owned by a qualified retirement plan to qualify as stock held by a licensee for certain professional corporations and to permit 49% of a professional certified public accountant corporation to be owned by a non-CPA.

The act amends G.S. 55B-6 of the Professional Corporation Act to permit stock in professional corporations of architects (Chapter 83A), landscape architects (Chapter 89A), engineers and land surveyors (Chapter 89C), and geologists (Chapter 89E) to be held by a qualified employee retirement plan provided the plan's trustees are all licensees. A new subsection is added to permit up to 49% of the stock in a professional certified public accountant corporation to be held by non-CPA's, including other corporations, partnerships, or other business entities, provided that all professional services performed on behalf of the corporation are performed by licensed CPA's.

The Foreign Professional Corporation Act is amended to make conforming changes to reflect the changes made to the Professional Corporation Act, except that only one trustee of a qualified employee retirement plan is required to be licensed in North Carolina. This section also permits a foreign professional corporation to operate in North Carolina even though the corporation is authorized in its home state to offer a broader range of services than is permitted under NC law, provided that the services offered in this State are limited to those services permitted to be offered by NC professional corporations.

The act became effective August 10, 1999. (WR)

Technical Correction/Limited Liability Companies

S.L. 1999-456, Section 51 (HB 162, Section 51) changes the Limited Liability Company (LLC) Act by deleting the merger of LLC's with an other LLC as a matter requiring a unanimous vote of the members of the LLC.

The act became effective August 13, 1999. (For a summary of the new law governing mergers involving limited liability companies, see **Revise Law Governing Mergers**, as summarized above.) (WR)

Utilities

Extend Sunset/Municipal Electric Amendments

S.L. 1999-111 (SB 658) amends prior law by extending a sunset provision. S.L. 1997-346 allows secondary suppliers of electricity (suppliers other than the city or the entity holding a franchise from the city) to supply electricity in newly annexed municipal territory with the agreement of the city. The act also made changes to Chapter 117 of the General Statutes, which applies to electric membership corporations and telephone membership corporations. It allows

for voting by proxy where the issue involves sale or encumbrance of co-op property, or the dissolution of an electric cooperative. Prior to the 1997 amendments, only votes cast in person could be counted. S.L. 1997-346 was set to expire on the date of adjournment sine die of the 1999 General Assembly. This act extends the sunset to December 31, 2003.

The act became effective May 28, 1999. (SR)

Extend the Universal Service Deadline

S.L. 1999-112 (SB 1008) extends the date by which the Utilities Commission must adopt final rules concerning the provision of universal telecommunications service. The previous deadline was July 1, 1999. The act extends this deadline to July 1, 2001.

The act became effective May 28, 1999. (SR)

Future of Electric Service/Members

S.L. 1999-122 (HB 778). See **State Government**.

EMC Subsidiaries

S.L. 1999-180 (HB 476) expands the powers of electric membership corporations (EMCs) to allow them to engage in specific business activities that are in addition to supplying electricity. There are specific limitations on this authorization. There is also Utilities Commission oversight of certain subsidiary activities.

The act allows the electric membership corporations to be involved in separate business entities, limited to the following activities:

- Energy services and products.
- Telecommunications services and products.
- Water and wastewater collection and treatment.

These subsidiary activities are limited as follows:

- They must not be financed through the Rural Utilities Service of the U.S. Department of Agriculture, except for water or wastewater collection and treatment.
- The subsidiary businesses are subject to all taxes levied on similar businesses.
- The subsidiary must fully compensate the electric membership corporation if it uses any of the EMC's personnel, services, equipment, or tangible and intangible property. (See below for further information on this limitation.)
- The subsidiary must be a separate entity and must be organized as a for-profit corporation or a limited liability company.
- The subsidiary cannot receive from the EMC any investment, loan, guarantee, or pledge of assets in an amount that, in the aggregate, exceeds 10% of the assets of the EMC.
- If the subsidiary will engage in activities involving petroleum products (which includes liquefied petroleum gas), then the EMC may not form or organize the business entity. The EMC must buy into an existing business already engaged in these activities.
- Directors or spouses of Directors of an EMC may not be employed or have any financial interest in the subsidiary business.

The Utilities Commission will have oversight to determine whether a subsidiary has fully compensated the EMC for use of any personnel, services, equipment, or property. To enforce this authority, the Utilities Commission has the power to direct the EMC to adjust any charges. If the EMC does not comply, the Utilities Commission may order the EMC to divest itself of its interest in the subsidiary. The compensation to be paid by the subsidiary to the electric membership corporation for the use of personnel, services, equipment, or property must be the

greater of the competitive market price or the EMC's fully distributed costs applicable to the personnel, services, equipment, or property. If real property is involved, the payment amount must include the intangible value of not having to purchase the real property and any value of identification with the EMC because of the use of the particular real property.

The act requires the Utilities Commission to report to the Joint Legislative Utility Review Committee on the Commission's activities conducted pursuant to this act. The Commission will make recommendations to the General Assembly, if any are necessary.

The act also expresses the intent of the General Assembly that board members and employees of every EMC reflect the diversity of the community it serves, and requires each EMC report minority representation to the North Carolina Association of Electric Cooperatives, which will report to the Joint Legislative Commission on Governmental Operations. The Association's reports are due two years and four years from when the bill became law.

The act became effective June 16, 1999. (SR)

Telecommunications Relay Service

S.L. 1999-402 (SB 547) amends G.S. 62-157 ("Dual party relay system") to replace the reference to a "dual party relay system" with "telecommunications relay service." The act clarifies that statewide telecommunications relay service for telephone service will be provided not only to hearing impaired or speech impaired persons, but also to persons who are visually impaired. The act authorizes the Utilities Commission to allow the Department of Health and Human Services to use a portion of the surcharge collected by local providers to provide telecommunications devices for persons with the described impairments. The surcharge is currently imposed on all residential and business local exchange access facilities and is used to fund a statewide system for hearing impaired or speech impaired persons.

The act became effective August 5, 1999. (SR)

911 Wireless Services/Interest Rate

S.L. 1999-456, Sec. 18 (HB 162, Sec. 18) amends G.S. 62A-25(d) by changing the rate of interest earned by commercial radio service providers on invoices unpaid by the Wireless Fund because of insufficient revenue. Previously, the rate of interest was 8% per annum. This change provides that the interest will be equal to the rate earned by the Wireless Fund, which is maintained and invested by the State Treasurer.

This section was effective August 13, 1999. (SR)

Miscellaneous

Country Ham Preservation Act

S.L. 1999-13 (SB 560) exempts from regulation, under the food and lodging facilities sanitation statutes, markets that sell uncooked cured country ham or uncooked cured salted pork and that engage in minimal preparation when that minimal preparation is the only activity that would otherwise subject the markets to regulation under these statues.

The act became effective March 31, 1999, and applies to establishments in operation on or after that date. (RZ)

Letters of Credit UCC Rewrite

S.L. 1999-73 (SB 245) amends Chapter 25 of the General Statutes to enact the Uniform Commercial Code Revised Article 5 (Letters of Credit) and makes conforming and miscellaneous

amendments to the Uniform Commercial Code's Article 1 (General Provisions), Article 2 (Sales), and Article 9 (Secured Transactions). Completed in 1995, the revised Article 5 modernizes and clarifies the original Article 5, which was drafted almost 40 years ago and enacted in North Carolina in 1965.

Revised Article 5:

- Conforms letter of credit law to current customs and practices.
- Accommodates new forms of letters of credit, changes in customs and practices, and evolving technology.
- Maintains letters of credit as an inexpensive and efficient instrument facilitating trade.
- Resolves conflicts among reported court decisions.

The act became effective October 1, 1999, and applies to letters of credit issued on or after that date and does not apply to transactions, events, obligations, or duties arising out of or associated with letters of credit that are issued before that date. (EM)

Real Estate Salesman/Broker Licensure

S.L. 1999-200 (HB 899) amends the real estate licensing law. The salesman and broker real estate course will now be longer and must be taken within a shorter period of time prior to application for licensure. The act also eliminates the broker exam, clarifies the ethical standard for licensure, and clarifies the Real Estate Commission's rulemaking authority for licensing matters and real estate instruction.

G.S. 93A-4, which governs the application for licenses and qualifications, is amended to permit a licensed real estate firm to also be organized as a limited liability company or other business entity. The law is also amended to increase the required salesman course hours from 30 hours to 67 hours and to shorten the time period prior to application during which this course may be taken from 5 years down to 3 years. The required broker course hours are increased from 30 hours to 60 hours. The time period for this instruction prior to application for the broker's license has also been shortened from 5 years to 3 years.

The act eliminates passage of a broker's examination in addition to the salesman's examination as a requirement for getting a broker's license. The real estate licensing exam may now be taken by computer with any additional cost associated with taking the exam by computer to be born by the applicant.

The act clarifies that the Commission's rulemaking authority over applications for licensure also applies to license examinations, license renewals, and license reinstatements.

The law is amended to clarify that the rulemaking authority for approval of real estate schools and instruction applies to the schools, the instructors, the textbooks, the instruction, as well as the administration and content of required education courses and programs.

The act became effective October 1, 2000. (WR)

Uniform Prudent Investor Act

S.L. 1999-215 (SB 178). See **Property, Trusts, and Estates**.

Update Corporate Conveyancing

S.L. 1999-221 (SB 761). See **Property, Trusts, and Estates.**

Real Estate Licensure Law Changes

S.L. 1999-229 (SB 867) makes the following changes to the real estate licensure laws:

- Requires all real estate brokers or salespersons to obtain a North Carolina real estate license, even if the person or entity is licensed in another state and is affiliated with a licensed broker or salesperson in this State.
- Defines the term "broker-in-charge" as a broker who has responsibility for the supervision of real estate salespersons at a particular office.
- Authorizes the Real Estate Commission (Commission) to delegate to its staff the Commission's authority and duties, except for it's authority to make rules or duty to act as a hearing panel.
- Allows the Commission to require a broker-in-charge to complete a special course of study not to exceed 6 hours every 3 years. This is in addition to the existing continuing education requirements.
- Gives the Commission subpoena power for witnesses and documents in matters heard by the Commission. The Commission may apply to the superior court in the county where the matter is being heard for enforcement of the subpoena. The Commission is exempted from the requirements of Chapter 53B, The North Carolina Financial Privacy Act, with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution. However, the Commission must notify the licensee that the records have been obtained.
- Increases the amount of time certain individuals have to file claims against the realtor trust fund for unpaid judgments. Previous law allowed claims under $1,500 the longer time period for filing a claim, while claims over $1,500 were subject to a shorter filing requirement. The act changes this amount to $3,000.
- Waives the rights of an applicant or judgment debtor who fails, after proper notice, to appear at a hearing for recovery from the Real Estate Recovery Fund (unless the Commission excuses the absence). The act also deletes the requirement that responses to the application for recovery be filed within 30 days of service.
- Allows the Commission to waive procedural defects in an application for payment from the Real Estate Recovery Fund, if the claim appears otherwise meritorious.
- Increases the limits on payments from the Real Estate Recovery Fund as follows:

	Old Max. Limits	New Max. Limits
Recovery per transaction	$10,000	$25,000
Recovery per licensee per year	$10,000	$25,000
Recovery per licensee overall	$20,000	$50,000

  A person who files an application for payment after these limits have been reached is not entitled to payment and may not seek judicial review of the Commission's award of payments to other parties except for abuse of discretion by the Commission.
- Provides that a separate bond is not required for each branch of a licensed real estate school.
- Defines a "developer" (under the time share provisions) to include a person who creates a time share, or time share project or program, or purchases a time share for purposes of resale. The definition excludes a person who purchases a time share for his or her own occupancy, use and enjoyment.
- Defines "time share" to include a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use.
- Provides that the fees paid for application to register a timeshare are nonrefundable (unless the Commission's rules specify otherwise).

The act became effective October 1, 1999. (LJ)

Filing of Foreign Agreements

S.L. 1999-260 (SB 192). See **State Government.**

Alcoholic Beverage Sales

S.L. 1999-322 (SB 812). See **Local Government.**

Clarify MV Dealers' Licensing Law

S.L. 1999-335 (SB 420) makes numerous changes to the laws governing motor vehicle dealer franchises. Most of the changes relate to the activities a manufacturer or distributor is prohibited from doing that would coerce or limit the ability of a dealer to operate the dealer's business

Automatic stay. The act authorizes an automatic, indefinite stay of the Commissioner of Motor Vehicles' (Commissioner) determination pending all appeals. The court may require the dealer to post a bond. However, neither the bond nor any damages would be payable if the affected dealership is sold or transferred by the manufacturer within 180 days of the Commissioner's order.

Dealership Facilities Assistance. When a manufacturer terminates, cancels or fails to renew a franchise, the manufacturer may be liable for the rental value of the dealership facility. Under previous law, the manufacturer could be required to pay rent for the lesser of the unexpired term of the lease or one year. The act extends this period to three years and also provides that the dealer's duty to mitigate damages is deemed satisfied if the dealer lists the property with a real estate agent and reasonably cooperates in attempts to sell or lease the property. Motorcycle manufacturers are exempted from the changes to this provision.

Allocation of Vehicles to Dealers. The act adds language to current law, requiring that manufacturers allocate vehicles to dealers in a manner that provides them with an adequate supply of vehicles by series, product line, and model in a fair and consistent manner, unless there is a consent order or other administrative or court order providing for a different method of allocation.

Incentive Programs. Currently, incentive programs operated by certain manufacturers are authorized to continue until December 31, 1999. The act extends these programs until December 31, 2002.

Exclusive Facilities. Under previous law, a manufacturer could require a dealer to maintain exclusive facilities, personnel, or display space, if it is reasonable to do so under current economic conditions or it is justified by reasonable business considerations. The act changes the law and prohibits a manufacturer from requiring a dealer to maintain these things under any circumstances. Heavy truck manufacturers are exempted from this provision under certain conditions. Heavy trucks are those motor vehicles with a gross weight rating of 8,500 pounds or more.

Factory Owned Stores. A manufacturer cannot own a dealership except under certain limited circumstances. The act adds a significant new exception which allows manufacturers to own dealerships if:

There were no more than 13 dealerships of that manufacturer in the State as of January 1, 1999.

The manufacturer owns no more than a 45% interest in the dealership.

The manufacturer owned dealerships no closer than 35 miles to the nearest dealership of the same line make of vehicle owned by another dealer.

The manufacturer's franchise agreements allow dealers to operate as many dealership facilities as the parties agree are appropriate within a defined geographic area.

As of July 1, 1999, no less than half of the dealers of that line make in the State own two or more dealerships in the geographic territory of their franchise agreement. This section also created an exception for heavy truck manufacturers.

The act became effective October 1, 1999. (KCB)

Clarify MV Dealer Transfer Rights

S.L. 1999-336 (SB 419) expands the law which prohibits a manufacturer from preventing or attempting to prevent a dealer from receiving fair compensation for the sale or transfer of the dealership. The act provides that a manufacturer may not use a contractual right of first refusal or other means to prevent the transfer, nor may a manufacturer refuse to approve the transfer based on the manufacturer's opinion that the franchised dealership is not viable or consistent with the manufacturer's marketing plans. The act also provides that the manufacturer owes no duty to the actual or proposed purchaser of the franchise to disclose its opinion regarding viability.

The act became effective July 21, 1999. (KCB)

Regulation of LP Gas

S.L. 1999-344 (SB 785) repeals the prohibition against installing unvented liquefied petroleum space heating appliances in a manufactured home (mobile home) and repeals the restriction on the size of unvented liquefied petroleum space heating appliances that may be installed in sleeping rooms of any type of structure. The act also shifts, from the Commissioner of Agriculture to the Building Code Council, the regulatory authority for approving liquefied petroleum burning appliances designed for domestic use. The Building Code Council is the organization responsible for adopting the State Building Code. Because the current State Building Code prohibits the installation of unvented space heating appliances in bedrooms of any residential building, the effect of the act is to allow the installation of unvented liquefied petroleum space heating appliances in manufactured homes. The act also directs the Legislative Research Commission to study the advisability of allowing the installation of unvented gas burning heating appliances in manufactured and modular homes.

The act became effective July 22, 1999 and applies to liquefied petroleum gas burning appliances installed on and after that date. (RZ)

Manufactured Homes Law Changes

S.L. 1999-393 (SB 941) makes several changes, both technical and substantive, to the laws governing the operations of the North Carolina Manufactured Housing Board (Board) and the State's role in administering the manufactured home warranty program under federal (HUD) law. The act makes the following additional changes:

- Provides that 15% of the Board's unexpended funds do not revert to the General Fund.
- Allows the Board to require up to 8 hours of continuing education for licensees. The Board may establish various fees (up to specified amounts) for various aspects of continuing education, including course approval, course approval renewal, and course sponsor fees. The Board may charge licensees for each course or activity submitted to the Board for approval. The Board may adopt rules governing the contents of courses. These rules may include a provision for hardship waivers of continuing education requirements. Failure to complete the continuing education requirements results in a lapse of the license.
- Requires an applicant to inform the Board of changes in his or her address within 10 days. Allows the Board to serve notice on a licensee personally or by first-class mail at the address provided by the licensee. Notice is deemed delivered four days after mailing.
- Eliminates the requirement that the Board forward to the Attorney General and the Commissioner of Insurance a copy of each warranty service complaint filed by consumers.

- Provides that the amount of any payment made by the buyer towards the purchase of the home or accessories, and the buyer's and dealer's signatures, must be included in a manufactured home purchase agreement in addition to the information already required by law (current law refers only to the amount of the "deposit").
- Requires the Commissioner to consider certain factors, such as the extent of harm caused and whether the violation was willful, in determining the amount of a civil penalty for violation of these laws.
- Increases the criminal penalty, from a Class 1 misdemeanor to a Class I felony, for knowing and willful violation. This penalty is required by federal law.
- Repeals Article 9D of Chapter 143 of the General Statutes (Enforcement of Building Code Insulation and Energy Utilization Standards). These standards are already incorporated into the State Building Code.

The act became effective August 4, 1999, except for the provision on the disclosure requirements for manufactured home purchase agreements, which become effective January 1, 2000. (LJ)

Self-Serve Storage/Late Payments

S.L. 1999-416 (HB 885) creates Article 35 in Chapter 66 of the General Statutes regulating self-service storage rental contracts. This act requires self-service storage rental contracts include in bold type of a minimum size of 14 points and conspicuously placed, the terms regarding the imposition of late fees and any provisions pertaining to the payment of court costs, attorney's fees, or other costs associated with the payment of late fees. A self-service storage business that violates this requirement may not recover late fees or attorney's fees. Late fees cannot exceed 15% of the rental payment, may be imposed only one time for each late rental payment, and may not be imposed until the rental payment is at least five days late. In addition, a late fee may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default. Any waiver of any of the provisions of Article 35 shall be deemed void and unenforceable.

The act became effective October 1, 1999, and applies to rental contracts for self-service storage made on or after that date. (RZ)

Collection Agency Definition

S.L. 1999-419 (HB 660) amends the insurance laws that regulate collection agencies to clarify that designated representatives of programs for child support enforcement for a county or region of the State are not collection agencies regulated by the Department of Insurance. Designated representatives perform child support enforcement duties.

The act became effective August 5, 1999. (LJ)

Mortuary Science Changes

S.L. 1999-425 (SB 212) establishes procedures for insurance companies to purchase the assets of or merge with burial associations. The act provides conditions whereby an association may increase its assessments and the procedures to implement an increase. The act authorizes the Legislative Research Commission to study the insolvency of mutual burial associations. Finally, the act allows surface burial vaults under certain circumstances.

Asset Purchase or Merger. Under current law, insurance companies may purchase the assets of or merge with burial associations. The act provides guidelines for the asset purchase or merger. The guidelines include:

- Insurance companies desiring to purchase the assets of or merge with a burial association must submit to the North Carolina Board of Mortuary Science (Board) a written proposal of the proposed purchase or merger.
- The association must meet regarding the proposal and a representative of the insurance company shall be permitted to explain the proposal at this meeting.
- The Board shall review the procedures of the meeting. In the event that a purchase or merger was approved at the association's meeting, the Board shall issue an order approving of the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

Increase in Assessments. An association may increase its assessments if the association's current assessments are unlikely to be, within the next three years:

- Adequate to reach or maintain a reserve of at least $21.00 per member, or
- Adequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association.

The act provides requirements the association must meet regarding an assessment increase.

Voluntary Dissolution of an Association. The Board shall issue an order of liquidation where an association votes for voluntary dissolution. The liquidation order may include:

- That the agreements for members' benefits, as well as the association's records, property, and unexpended balances of funds to be liquidated, be transferred to a financially sound association with the financially sound association's approval.
- That a final report is filed with the Board no later than December 31 of the year of liquidation.
- That the association follows various requirements including the issuance of a certificate to members. The certificate may be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees to accept the certificates.

Surface Burial Vaults Allowed under Certain Circumstances. Under current law, deceased persons not buried in a mausoleum must be buried 18 inches below the ground surface. This act amends the law to allow an individual to be buried in a surface burial vault where:

- The land to be used for the burial is located in a family owned cemetery that was established by deed recorded prior to January 1, 1989; and
- The individual to be buried is buried in a surface burial vault in a manner similar to that of the individual's deceased spouse who was buried prior to January 1, 1981.

The act became effective August 5, 1999. (EM)

Auto Repair Work Disclosures

S.L. 1999-437 (SB 830) creates a new Article 15 of Chapter 20 of the General Statutes that requires motor vehicle repair shops to adhere to the following concerning repairs and repair estimates:

- Before doing any diagnostic work or repair and unless waived by the customer in writing, the shop must prepare a written estimate, when the estimated cost of repair is more than $350. The estimate must disclose any vehicle storage charges and that the customer may request that replaced parts be saved for inspection or return. A shop that does not agree to perform the repair work is not required to do an estimate.
- Before preparing an estimate, a shop must disclose to the customer the amount, if any, of the charge for doing the estimate, and obtain authorization on the written estimate to prepare the estimate. The charge for an estimate cannot be excessive in

relation to the work performed. The shop cannot require the customer to waive his or her rights under the act as a prerequisite for repairing the vehicle.

- The shop must promptly notify the customer of additional repair work and its cost if: (i) the initial estimate was only for the diagnostic work and that work has been completed; (ii) the actual charges for repair work will exceed the estimate by more than 10%; or (iii) the diagnostic work has been completed on a vehicle that was dropped off at the shop during off hours or by someone other than the owner. Once notified, the customer may authorize, modify, or cancel the repair. If a customer cancels an authorized repair after it has begun because the repair cost will exceed the estimate, the shop must re-assemble the vehicle and may charge for the tear-down and the reassembly if the customer has been notified of these possible costs from the beginning.
- A shop may not charge more than 10% over its estimate for repairs unless the customer has consented. The shop may not keep the owner's vehicle (under a possessory lien) when the final cost is more than 10% over the estimate and the customer pays the amount of the estimate plus 10%.
- The shop must give the customer an invoice of the completed repair work, including an itemized list of parts, labor, merchandise supplied, the costs thereof, and the use of replacement parts.
- The shop must conspicuously post a sign that discloses the customer's right to receive or waive a written estimate if the repair cost is over $350, and the customer's right to the return or inspection of parts that have been replaced. The right to the return of parts does not apply if the shop has a warranty arrangement or exchange parts program with a manufacturer, distributor, or supplier.
- It is a violation of the new Article for a shop or its employees to charge for unauthorized repairs, make certain misrepresentations, fraudulently alter an invoice or estimate or misuse the customer's credit card, make misleading statements, or make false promises to induce a customer to have the vehicle repaired. A person injured by a violation of the Article may bring an action in court. The prevailing party may be entitled to the recovery of court costs and attorneys fees in addition to damages.

For purposes of the Article, a motor vehicle repair shop includes any person who repairs motor vehicles of another for compensation, mobile motor vehicle repair shops, motor vehicle dealers, garages, service stations, truck stops, paint and body shops, brake, muffler and transmission shops, glass work shops, and self-employed individuals that perform this work for compensation. The term does not include:

- Government repair shops servicing their own vehicles.
- Persons servicing their own vehicles or for-hire vehicles that are rented for periods of 30 days or less.
- Persons repairing vehicles used principally in agriculture and only incidentally operated on the highways.
- Persons servicing vehicles solely for vehicle auctions.
- Any motor vehicle repair shop if the repair in question does not cost more than $350.
- Any person or repair shop servicing commercial construction equipment or motor vehicles with a GVWR of at least 2000 pounds.
- Any shop that is performing a repair upon the authorization of an insurer that has agreed to pay for the repair.

The act also creates a new Article 35 of Chapter 66 of the General Statutes, which applies to any business that services or repairs private passenger vehicles. When this business advertises the cost of a specified service or repair, it must disclose in the advertisement all additional charges routinely charged for that service or repair, including shop supplies or charges. The business is not required to disclose fees and taxes required by law. The act authorizes a consumer, upon written notice to a business that fails to comply with these disclosure

requirements, to pay only the charges disclosed plus any legally required taxes and fees. Violation of the Article is an unfair trade practice under G.S. 75-1.1.

The act becomes effective January 1, 2000. (RJ)

Financial Identity Fraud

S.L. 1999-449 (HB 1279). See **Criminal Law and Procedure.**

Studies
Legislative Research Commission

The 1999 Studies Bill

Telephone Solicitation Study

S.L. 1999-395, Sec. 2.1(8)b (HB 163, Sec. 2.1(8)b) authorizes the Legislative Research Commission (LRC) to study the regulation of telephone solicitation and the issue of allowing consumers to be placed on a list of residential telephone subscribers who object to telephone solicitations and prohibiting telephone solicitors from making calls to persons on that list. This section became effective July 1, 1999. (RZ)

Consumer Protection Issues Study

S.L. 1999-395, Sec. 2.1(10) (HB 163, Sec. 2.1(10)) authorizes the LRC to study consumer protection issues including:

- The higher cost of credit from certain credit sources.
- Cash-out transactions used by some check-cashing businesses.
- Sale of structured settlements and the effects of Senate Bill 746 (see **Civil Law and Procedure**).
- Cash converter regulation.
- Credit insurance and mortgage credit, including the licensing, regulation, and examination of mortgage brokers and mortgage lenders, financing of credit insurance premiums, and other aspects of the mortgage market relating to the availability of mortgage credit.

These provisions became effective July 1, 1999. (KCB)

Future of Electric Service Funding Continuation

S.L. 1999-395 (HB 163) Part VI provides that the Study Commission on the Future of Electric Service in North Carolina may continue to be reimbursed from the funds in the Utilities Commission and Public Staff Fund. The reimbursement may continue through the 1999-2000 fiscal year.

The act became effective July 1, 1999. (SR)

Chapter 5
Constitution and Elections

Bill Gilkeson (WRG)

Enacted Legislation
Constitution and Elections

(Note: Regardless of the effective date the General Assembly places on legislation affecting voting, the legislation cannot be implemented until it has received approval from the U.S. Attorney General under Section 5 of the Voting Rights Act of 1965. This applies to statewide legislation and to legislation affecting any of the 40 counties covered by Section 5. When the summaries below say "made effective" on a certain date, that is the effective date set out in the bill.)

Campaign Finance Changes

S.L. 1999-31 (HB 921) makes several changes to the North Carolina Campaign Finance Act (Act). The changes are designed to make the Act enforceable. In N.C. Right to Life, Inc. v. Bartlett, the 4th Circuit Court of Appeals ("Court") invalidated as overbroad North Carolina's definition of "political committee." That definition is key to the enforcement of the Act. The Court also invalidated as overbroad the State's ban on contributions and expenditures by corporations and unions. The Court held that the Act contained provisions that were constitutionally acceptable. However, the Court also held that certain provisions could not be enforced at all until they were narrowed. This act attempts to do that narrowing to make the statutes enforceable.

The act was made effective May 4, 1999. It was approved under the Voting Rights Act June 14, 1999. (WRG)

Precinct Boundaries/Munic. Redistricting

S.L. 1999-227 (HB 248) makes several changes to update the statute governing the Precinct Boundary Program. That program is preparing all the State's voting precincts for the 2000 Census and the 2001 redistricting. The act extends for two years a partial freeze of precincts while elections and redistricting take place. It also allows counties, under certain circumstances, to postpone the effective date of their new precincts.

The act was made effective June 25, 1999. (WRG)

Carrboro/Chapel Hill Local Act

S.L. 1999-255, Sec. 4 (HB 841, Sec. 4) enables the Town Council of Chapel Hill to require candidates for town offices to disclose the names of all contributors to their campaigns. The general law for disclosure exempts candidates from reporting contributors under $100 and from reporting any contributors at all if the campaign will have transactions of under $3,000. The provision also enables the Town Council to set its own monetary limits for contributions to candidates in town elections, provided the limit is not higher than the limit of $4,000 per donor per donee per election which is the general law statewide. Contingent upon the passage of enabling legislation, the Chapel Hill Town Council adopted an ordinance requiring all town

candidates to report all contributors, regardless of amount, and setting the contribution limit for town elections at $200 per donor per donee per election.

The act became effective July 6, 1999. Because the county where Chapel Hill is located is not covered by Section 5 of the Voter Rights Act, this provision can take effect without U.S. Justice preclearance. (WRG)

Journalists' Testimonial Privilege

S.L. 1999-267 (SB 1009). See **Civil Law**.

Lobbying Law Amendments

S.L. 1999-338 (SB 290) increases the late fee for a lobbyist or lobbyist's principal failing to file an expense report with the Secretary of State. The prior law imposed a late filing fee of $10. The act imposes a fee equal to the late filing penalty for campaign finance reports affecting non-statewide races: $50 a day up to a maximum of $500.

The act is effective January 1, 2000. Because the bill does not affect voting, it is not subject to the preclearance provisions of Section 5 of the Voting Rights Act. (WRG)

Election Law Cleanup

S.L. 1999-424 (HB 1072), as amended by S.L. 1999-456, Sec. 63 (HB 162, Sec. 63) makes basic technical changes to the election statutes:

- Clarifies the role of the State Board of Elections in the process of ordering new elections.
- Clarifies the appeal process in contested elections.
- Reenacts provisions of the pre-1995 Voter Registration Laws that were inadvertently dropped when the Voter Registration Laws were rewritten in 1994.
- Clarifies candidate vacancies in nonpartisan judicial elections.
- Removes from the petition statute provisions held unconstitutional by the courts.
- Amends the Campaign Finance Changes Act (see above), including changes to the definitions of "political committee" and "referendum committee". Also amends the statute empowering the Executive Secretary-Director of the State Board of Elections to make rulings concerning campaign finance practices.

The act was made effective August 5, 1999. (WRG)

Election Law Changes-1

S.L. 1999-426 (HB 1074) makes the following changes to the election laws:

- Clarifies that any person who has accepted responsibility for another individual's signed voter registration form must turn the form in to the board of elections in time for the registrant to vote in the next election. Failure to make a good faith effort is a Class 2 misdemeanor. This provision becomes effective January 1, 2000.
- Makes it a Class 2 misdemeanor to alter a voter registration record without written authorization from the voter or the State Board of Elections. This provision is effective October 1, 1999.
- Allows county boards of elections to designate voting places outside a precinct.
- Creates a pilot program in up to three counties to allow those counties to temporarily use two voting places in the same precinct. This provision is effective January 2, 2000, and expires January 2, 2002.

- Allows county boards of elections to require that public buildings chosen as voting places provide voters with adequate parking. This provision is effective January 1, 2000.
- Gives the State Board of Elections more specific authority over municipal boards of elections. This includes the authority to temporarily order county boards to conduct a city's elections if violations by a city council or municipal board reach a certain level of magnitude. This provision is effective January 1, 2000.
- Increases the minimum compensation for county election directors from $8 per hour to $12 per hour. This provision is effective July 1, 2000.
- Lowers, from 14,001 to 6,501, the registered-voter threshold for a county to have a full-time board of elections. This provision is effective July 1, 2000.
- Allows corporations and unions to make donations to a political party headquarters building fund.
- Changes the existing statute concerning a candidate's signature on a campaign finance report to conform to what has been enforced. Instead of signing every report, the candidate must sign only an organizational statement and the appointment of a treasurer.

Except where otherwise specified, the act was made effective August 5, 1999. (WRG)

Campaign Reform Act of 1999

S.L. 1999-453 (SB 881), as amended by S.L. 1999-456, Sec. 63 (HB 162, Sec. 63) makes these changes to the election laws:

- Requires sponsors of radio and TV political ads to accept responsibility for the ads' contents through personal appearances in the ads. This provision is effective January 1, 2000.
- Provides two ways to prove that someone "supports or opposes the nomination or election of one or more clearly identified candidates." That phrase is the key to campaign finance regulation under the statutes as amended by the Campaign Finance Changes act (see above).
- Clarifies the statute concerning rebutting presumptions in the campaign finance laws.
- Prohibits making, as well as accepting, anonymous contributions and contributions made in the name of another. This provision is effective December 1, 1999.
- Expands the authority of the State Board of Elections to adopt temporary rules under the Administrative Procedure Act.
- Clarifies that lobbyists and lobbyist-connected Political Action Committees (PACs) are prohibited from contributing to legislative candidates during legislative sessions and also from soliciting contributions on those candidates' behalf. This provision is effective October 1, 1999.
- Requires monthly, rather than quarterly, reports to the county boards of elections of felony convictions and deaths. This provision is effective January 1, 2000.
- Requires that after the 2000 Census, voter registration forms ask registrants not only for race, but also ethnicity. The race and ethnicity categories would be the same as those used by the Census Bureau. This provision is effective January 1, 2002.

Except where otherwise specified, the act was made effective August 12, 1999. (WRG)

Absentee Voting Changes

S.L. 1999-455 (SB 568) removes the excuse requirement for One-Stop absentee voting in general elections held in November of even-numbered years and for other elections held on the same day. The excuse requirement remains in place for mail absentee voting and for One-Stop in primaries, municipal elections, and referenda not occurring at the same time as the general

election in November of even years. The act also allows county boards of elections to designate additional sites for One-Stop voting beyond the county board office. The act also streamlines what the county board of elections must do to process absentee ballots.

The act is effective January 1, 2000. (WRG)

Major Pending Legislation

Clean Election Act

SB 882 and HB 1402 are similar, but not identical bills. In general, they would create a system for comprehensive public financing of campaigns for Governor, other Council of State offices, and the General Assembly. The public funding would be available only to candidates who raise a threshold amount of qualifying contributions and who agree to limit their expenditures. Although neither of the bills crossed-over, they are eligible because they contain an appropriation. It is mentioned in the legislation authorizing the Election Laws Revision Commission as one of the topic to be studied. (WRG)

Statewide Elections/Funding

HB 1023 would require the State to pay for the pro rata share of election costs attributable to statewide contests. Counties currently pay for almost all election costs. Although the bill did not cross-over, it is eligible because it contains an appropriation. (WRG)

Qualifications/Consistency

HB 930 would propose to the voters a constitutional amendment allowing 18 year olds to serve in any elective office. The Constitution now arguably allows 18 year olds to serve in the State House. The bill passed the House and is in the Senate. (WRG)

Session Length Limits

SB 09 would amend the Constitution to set a deadline for the General Assembly to conclude its business. It would also lengthen the terms of State Senators from two to four years. The bill passed the Senate and is in the House. (WRG)

District Court Elections Nonpartisan

SB 690 would provide that District Court judges be elected on a nonpartisan basis. The bill passed the Senate and is in the House. (WRG)

Studies

New Independent Studies/Commissions

Election Laws Revision Commission

S.L. 1999-395, Part IV (HB 163, Part IV) creates the Election Laws Revision Commission. The Commission consists of 17 members, 4 appointed by the Speaker of the House, 4 appointed by the President Pro Tempore of the Senate, 4 appointed by the Governor, and 5 ex officio. The Commission is charged with doing a comprehensive rewrite of the election laws. It must also

study specific issues such as public financing of campaigns, the relationship of the State Board of Elections to the Administrative Procedure Act, and alternative voting systems.

This section was made effective August 5, 1999. (WRG)

Referrals to Departments, Agencies, Etc.

Use of Internet for Agency Publications

S.L. 1999-237, Sec. 26A (HB 168, Sec. 26A) directs the State Board of Elections, among several other agencies, to study how to use the Internet to fulfill its publication duties.

This section was made effective July 1, 1999. (WRG)

Pilot Study: Two Voting Places Per Precinct

S.L. 1999-426, Sec. 4 (HB 1074, Sec. 4) directs the Executive Secretary-Director of the State Board of Elections to study the operation and consequences of a pilot program in which up to 3 counties experiment with using two voting places in up to three of their precincts. The Executive Secretary-Director is to report to the 2001 General Assembly by February 1, 2001.

This section was made effective August 5, 1999. (WRG)

Chapter 6
Criminal Law and Procedure

Karen Cochrane-Brown (KCB), Brenda Carter (BC), Bill Gilkeson (WRG),
Susan Hayes (SH), Tim Hovis (TH), Jo McCants (JM),
Walker Reagan (WR), Steve Rose (SR), Ebher Rossi (ER)

Enacted Legislation

Magistrates Accept Waivers/Some Vehicle Violations

S.L. 1999-80 (HB 870) amends G.S. 7A-273, regarding magistrates' powers. The act allows magistrates to accept guilty pleas or admissions of responsibility in misdemeanor cases involving the violation of a county ordinance that regulates the use of dune or beach buggies or other power-driven vehicles on the foreshore, beach strand, or the barrier dune system.

The act became effective May 21, 1999. (JM)

Expand Assault-School Personnel

S.L. 1999-105 (SB 637) amends the Class A1 misdemeanor of assaults, batteries, and affrays to include assaulting someone attempting to discharge duties as a school employee or school volunteer. It would also be a Class A1 misdemeanor to assault someone because that person had attempted to discharge those duties in the past.

The act becomes effective December 1, 1999. (WRG)

Amend Larceny of Ginseng

S.L. 1999-107 (SB 769) broadens the effect of the Class H felony of stealing ginseng growing on the land of another person. The act eliminates the requirement that the theft is a felony only if the ginseng is in beds and is surrounded by a fence.

The act becomes effective December 1, 1999. (WRG)

Update Controlled Substance Schedules

S.L. 1999-165 (SB 920) updates North Carolina's Controlled Substances Schedule to conform with the federal schedule of controlled substances. The act also provides that trafficking in MDA or MDMA is a felony. The updated schedule became effective May 31, 1999. The MDA trafficking felony becomes effective December 1, 1999. (WRG)

No Guns at School Law/School Employees

S.L. 1999-211 (SB 1096) makes it a Class I felony for a school employee to possess a firearm on educational property. It extends the prohibition against weapons on educational property to include community colleges. It also makes it a Class I felony for a student or school employee to have a firearm at a curricular or extracurricular activity sponsored by the school.

The act becomes effective December 1, 1999. (WRG)

Unsolicited Commercial Electronic Bulk Mail

S.L. 1999-212 (SB 288), as amended by S.L. 1999-456, Sec. 8 (HB 162, Sec. 8). See **Civil Law**.

McGruff Criminal Background Checks

S.L. 1999-214 (SB 1068) authorizes the Department of Justice and the Federal Bureau of Investigation to provide to any local law enforcement agency a criminal record check of any potential volunteer for the McGruff House Program. The background check may also include any adult member of the volunteer's household. The volunteer and any household member subject to the check must consent to the check. Refusal to give consent is considered withdrawal of the application. These checks will be fingerprint-based checks of the State and National Repository of Criminal Histories. The information furnished must remain confidential.

The act became effective June 25, 1999. (KCB)

Tracing Crime Weapons

S.L. 1999-225 (HB 1192) requires the Attorney General to collect whatever data is necessary to trace all firearms that are seized, forfeited, found, or come into the possession of any State or local law enforcement agency that are believed to have been used in the commission of a crime.

The act became effective June 25, 1999. (ER)

Clarify Blue Lights Illegal

S.L. 1999-249 (SB 172) clarifies whom may possess or use a blue light on a vehicle. Prior to this act, individuals could not possess or use a blue light on any vehicle except a publicly owned vehicle used for law enforcement purposes or any other vehicle when used by law enforcement officers in the performance of their official duties. The act makes it illegal for non-law enforcement personnel to possess or operate a blue light except when the blue light is

- Being installed on a law enforcement vehicle.
- Held in inventory for the purpose of being installed on a law enforcement vehicle.
- Held in inventory for sale for installation on a law enforcement vehicle.
- Installed on a vehicle solely for the purpose of demonstrating the blue light for sale to law enforcement.

The act becomes effective December 1, 1999, and applies to offenses committed on or after that date. (KCB)

Stop Threats/Acts of School Violence

S.L. 1999-257 (HB 517), as amended by S.L. 1999-387, Secs. 1-3 (HB 1154, Secs. 1-3). See **Education**.

Threats Against Children/Spouse

S.L. 1999-262 (SB 956) makes it unlawful to make threats against a person by threatening harm to that person's child, spouse, sibling, or dependent. Previous law only criminalized the threat if made against the person threatened. The threat is a Class 2 misdemeanor if communicated over the telephone or by e-mail, and a Class 1 misdemeanor if made in person.

The act becomes effective December 1, 1999. (WRG)

Bulletproof Vest/Commit Felony

S.L. 1999-263 (SB 1011) increases the penalty for a defendant who possessed a bulletproof vest while committing a felony. If a defendant is convicted of a felony and the court finds that the defendant possessed a bulletproof vest during the commission of the crime, the defendant is guilty of a felony one class higher than the underlying felony. If possession of the bulletproof vest is an element of the underlying offense, the enhanced punishment does not apply. This act also does not apply to law enforcement officers.

The act becomes effective December 1, 1999, and applies to offenses committed on or after that date. (KCB)

Handicapped Parking Fines

S.L. 1999-265 (HB 143) increases the fine for unlawfully parking in a parking space designated for handicapped parking, the unauthorized use of a license plate or placard provided to the handicapped, and the failure to designate parking spaces for the handicapped. The fine is increased from at least fifty dollars ($50), but no more than one hundred dollars ($100), to at least one hundred dollars ($100), but not more than two hundred fifty dollars ($250).

The act becomes effective January 1, 2000. (JM)

Amend Crime Victims' Compensation Act

S.L. 1999-269 (HB 290) amends the Crime Victims Compensation Act by authorizing the Secretary of Crime Control and Public Safety to appoint two members of the Crime Victims Compensation Commission. With respect to claims filed on or after July 1, 1999, the act increases the maximum amount, from $5,000 to $7,500, that the Director of the Commission may award to a crime victim. Claims in excess of the specified amount are evaluated and awarded by the Commission, and decisions are based upon the Director's recommendation and a review of the evidence. With respect to claims filed or pending on or after July 1, 1999, the act gives the Commission discretion to award a claim in cases where the victim was participating in a nontraffic misdemeanor at the time of the injury or in those cases where the victim has engaged in contributory misconduct. In exercising its discretion, the Commission may consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct.

The act became effective July 1, 1999. (BC)

Child Care Subsidy Fraud

S.L. 1999-279 (HB 304). See **Children and Families**.

Drug Treatment Court Amendments

S.L. 1999-298 (SB 852) allows a defendant who is eligible for the Drug Treatment Court Program to be placed on probation, if the prosecutor has deferred prosecution in the case and the court approves the placement. The defendant may then participate in the Drug Treatment Court Program (Article 62, Chapter 7A). The act also adds as a special condition of probation the participation in and the successful completion of a Drug Treatment Court Program.

The act became effective July 14, 1999. (SR)

Unlawful Use of Drivers License

S.L. 1999-299 (HB 1022) makes it a class I felony to present, display, or use a drivers license or learner's permit that contains a false or fictitious name during the commission or attempted commission of a felony. This act also provides that the presentation, display, or use of a special identification card that contains a false or fictitious name during the commission or attempted commission of a felony constitutes a class I felony.

The act becomes effective December 1, 1999. (ER)

Teacher/Student/No Sex Acts-2

S.L. 1999-300 (SB 742) makes it unlawful for any school personnel to engage in sexual activities with a student. The act creates two criminal offenses relating to sexual activity between students and persons who hold positions in schools. The first offense, "Taking indecent liberties with a student" makes it a Class I felony for a defendant who is a teacher, school administrator, student teacher, or coach, at any age, or who is other school personnel and is at least four years older than the student to take indecent liberties with a student. School personnel, other than a teacher, school administrator, student teacher, or coach, who is less than four years older than the student and who takes indecent liberties with a student is guilty of a Class A1 misdemeanor. A person is not guilty of the crime if the person is legally married to the student. Based on the case law interpretations of G.S. 14-202.1 (Taking indecent liberties with children), the type of sexual activity covered would include both "touching" and "non-touching" offenses, but not vaginal intercourse or a sexual act as defined by G.S. 14-27.1 (Rape and other offenses). Consent is not a defense to a charge under this act.

The second offense creates a type of statutory rape/sex act offense that is based on the relationship between school personnel and students. Under this provision, it is a Class G felony for a teacher, school administrator, student teacher, or coach, at any age, or other school personnel, who is at least four years older than the student to engage in vaginal intercourse or a sexual act with the student. School personnel, other than a teacher, school administrator, student teacher, or coach, who is less than four years older than the student and commits this crime is guilty of a Class A1 misdemeanor. Consent is not a defense. The act is not a crime if the defendant is lawfully married to the student.

For purposes of both offenses, the term "school personnel" means any person employed by a school, most independent contractors if they have access to students, and any person who volunteers at a school or a school-sponsored activity. The term "student" means any person enrolled in kindergarten through grade 12 in any school, and the term "school" means any public school, charter school, or nonpublic school.

The act becomes effective December 1, 1999, and applies to offenses committed on or after that date. (KCB)

Sentencing Services Program

S.L. 1999-306 (HB 331) renames the Community Penalties Program as the Sentencing Services Program (SSP). The new name reflects a change in purpose from reducing prison overcrowding through the use of community sentences to establishing a statewide sentencing services program that will provide court officials with information regarding local correctional programs and identify the offenders best suited for those programs. The sentencing services program will identify offenders who qualify for the program and prepare sentencing services plans. Qualifying offenders include felony offenders where an active sentence is not required, who are at high risk of committing future crimes, and who would benefit from a sentencing services program plan. Where appropriate, the judge must make a request for a plan prior to the imposition of sentence; the defendant or prosecutor must make the request prior to a guilty plea

or guilty verdict. Sentencing plans will be presented to the court, the defendant, and the State Plans may include recommendations for use of any treatment or correctional resources available and identification of resources to meet any educational, treatment, control, or other needs. In some instances, plans may report that no intermediate punishment is appropriate. The act makes several conforming changes to various statutes.

The act becomes effective January 1, 2000. (BC)

Amend Sex Offender Registry Laws

S.L. 1999-363 (SB 331) amends North Carolina's Sex Offender Registry provisions. Persons who are convicted of certain offenses must have their names placed on the Registry. There are two board offenses that trigger placement on the Registry: "offenses against a minor" and "sexually violent offenses." These are defined terms that include a number of specific, enumerated offenses. The act amended the law so that "solicitation" of, or "conspiracy" to commit any of the enumerated offenses will also trigger placement on the Registry. In addition, a court now has discretion to place a person's name on the Registry if that person is convicted of "aiding and abetting" the commission of the enumerated offenses. The act also provides that legal guardians who are convicted of "offenses against a minor" shall also have their names listed on the Registry.

The act became effective December 1, 1999. (WRG)

Drug Law Amendments

S.L. 1999-370 (SB 888) makes various changes to G.S. 90-95 (Violations and penalties of Controlled Substances Act) as follows:

- Raises possession of methamphetamine and amphetamine from a Class 1 misdemeanor to a Class I felony.
- Adds several substances to the list of immediate precursor chemicals.
- Changes the crime of trafficking in amphetamine to depend on the amount of amphetamine possessed in terms of grams rather than dosage units.
- Increases the penalty for trafficking in methamphetamines or amphetamines as follows:
  - If a person sells, manufactures, delivers, transports, or possesses 28 grams to 200 grams, the punishment is increased from a Class G felony to a Class F felony with a minimum of 70 months and a maximum of 84 months.
  - If a person sells, manufactures, delivers, transports, or possesses 200 grams to 400 grams, the punishment is increased from a Class F felony to a Class E felony with a minimum of 90 months and a maximum of 117 months.
  - If a person sells, manufactures, delivers, transports, or possesses 400 grams or more, the punishment is increased from a Class D felony to a Class C felony with a minimum of 225 months and a maximum of 279 months.

(These are comparatively the same punishment levels as trafficking in opium or heroin.)

The act also requires that when a person is convicted of an offense involving the manufacturing of a controlled substance the court must order the person to make restitution to the law enforcement agency for the actual cost of the clean up of any clandestine laboratory. Finally, the drug Ketamine is added to the list of Schedule III controlled substances.

The act becomes effective December 1, 1999 and applies to offenses committed on or after that date. (SH)

Abatement of Nuisances

S.L. 1999-371 (SB 929) makes various changes to the nuisance statutes as follows:

- Applies the nuisance statutes to situations involving all controlled substances, not just narcotic drugs.
- Allows for constructive knowledge of the nuisance in certain circumstances.
- Makes vehicles subject to forfeiture a nuisance.
- Allows the Attorney General, district attorney, county or municipality, including the sheriff or chief of police to request that the Alcohol Law Enforcement Division (ALE) investigate and make recommendations regarding actions to abate public nuisances.
- Excludes private dwellings from the inventory procedures used to restrain use of property by ex parte orders unless the private dwelling is used for profit.
- Allows the court to close the property pending trial on the merits.
- Adds breach of the peace to the offenses admissible to show the presence of a nuisance.
- Allows the plaintiff in a nuisance action to file a notice of lis pendens on the property pending the outcome of the suit.
- Allows the property to be forfeited if the owner had prior notice by any agency that could have brought suit that there was a nuisance on the property, even if the notice was not issued by the agency that ultimately brought suit.

The act became effective October 1, 1999. (SH)

Threaten Court Officers

S.L. 1999-398 (HB 478) creates the criminal offenses of endangering or threatening judges, district attorneys, and other court officers. Assault on an official is a Class I felony. If a deadly weapon is used, or if the assault results in serious bodily injury, the offense is a Class F felony. It is a Class I felony to threaten to kill or inflict serious bodily injury upon any of the specified officials. Similar offenses already exist for endangering or threatening legislative and executive officers.

The act becomes effective December 1, 1999, and applies to acts committed on or after that date. (BC)

Arrest Warrants/Copies

S.L. 1999-399 (HB 685) permits law enforcement officers to arrest a person using a copy of a warrant or order if the following conditions are met:

- The original warrant or order is in the possession of a member of a law enforcement agency that is located in the county where the officer is employed.
- The officer verifies with the agency that the warrant is current and valid.

The act became effective October 1, 1999. (ER)

Stop Misuse of Laser Pointers

S.L. 1999-401 (SB 348) creates the new criminal offense of "Criminal use of laser device", making it unlawful to point, intentionally, a laser device at another person while the device is emitting a laser beam. The act specifically exempts law enforcement officers and health care professionals who use laser devices, as well as any person who is licensed or otherwise authorized by law to use a laser device, so long as it is used in the performance of official duties. Violation of this act is punishable as a Class 1 misdemeanor.

The act becomes effective December 1, 1999, and applies to offenses committed on or after that date. (KCB)

1999 Governor's DWI Amendments

S.L. 1999-406 (HB 1135). Any provision of this act, for which a specific effective date is not mentioned, becomes effective December 1, 1999.

Lower Tolerance for Repeat Offenders. Effective July 1, 2000, an administrative graduated alcohol concentration scale is created for driving while impaired offenders. When a person convicted of DWI has his or her license restored, the Department of Motor Vehicles (DMV) must place a restriction on the license that the driver not operate a motor vehicle with an alcohol concentration of:

- 0.04 or more if it is the first restoration of a license after conviction of a DWI.
- Greater than 0.00 if
  - It is the second or subsequent restoration of a license after conviction of a DWI.
  - It is the restoration of a license for a person convicted of DWI: in a commercial vehicle; driving while less than 21 after consuming alcohol or drugs; felony death by vehicle, manslaughter, or negligent homicide when the offense involved impaired driving; or a revocation based on a restriction under this section.

The restriction is to remain on the person's license for the following period of time:

- Seven years if the revocation was a permanent revocation.
- Until the person's 21st birthday if the revocation was for driving while less than 21 after consuming alcohol or drugs.
- Three years in all other cases.

In order to have their license restored, the person must consent to this restriction, and also must consent to submit to a chemical analysis at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction. Violation of the restriction results in a one year administrative revocation of the driver's license by DMV.

Ignition Interlock. Effective July 1, 2000, an ignition interlock requirement is created for DWI offenders who have an alcohol concentration of 0.16 or more, or who have been convicted of another DWI within seven years of the current offense. When DMV restores the license of these individuals, they must restrict the person to driving only a vehicle equipped with ignition interlock.

The requirement is in effect for:

- One year if the revocation was for one year.
- Three years if the revocation was for four years.
- Seven years if the revocation was permanent.

Violation may occur as the result of driving a vehicle without ignition interlock, not personally activating the ignition interlock, or driving a motor vehicle with an alcohol concentration of 0.04 or greater. A person violating these provisions may be charged by a law enforcement officer with Driving While License Revoked, or may have their license administratively revoked by DMV based on an alcohol concentration reading of the ignition interlock.

Limited Driving Privilege Alcosensor Admissibility. The act allows the results of an Alco-Sensor (the roadside test) to be admissible in cases dealing with the violation of a limited driving privilege as proof of the presence of alcohol.

Increase Punishment for 19- or 20-Year Old Purchase or Possession of Alcoholic Beverages. The act repeals the portion of the statute that makes possession of beer or unfortified wine by a 19 or 20 year old an infraction. As a result of this change, possession of beer or unfortified wine by any person under 21 will be a Class 3 misdemeanor. Provision is made for expunction of the records of conviction of this offense by a 19 or 20 year old. (SH)

Sentencing Commission/Criminal Law Changes

S.L. 1999-408 (HB 328) makes various technical and conforming changes to certain criminal laws and criminal penalties as recommended by the North Carolina Sentencing and Policy Advisory Commission and others. Several offenses are classified in accordance with structured sentencing.

Worthless Checks. The act amends G.S. 14-107, which makes it unlawful to issue a check when the writer knows there are insufficient funds to cover it. The act combines the penalties for checks in the amount of $2,000 or less, making these violations a Class 2 misdemeanor. When the check is drawn on a nonexistent account, an account that has been closed, or there are three previous convictions, the offense is a Class 1 misdemeanor.

Duties of Officer. The act amends the penalty portion of G.S. 14-229, which prohibits an officer from entering upon the duties of office before executing and delivering the necessary bonds and taking the necessary oath. The act specifies that a violation of the statute is a Class 1 misdemeanor.

Structured Sentencing Points. The act amends G.S. 15A-1340.14(b), which deals with the assignment of points for prior convictions when determining an offender's prior record level under structured sentencing. It changes the definition of a misdemeanor to assign 1 point for Class A1 and Class 1 non-traffic misdemeanors, impaired driving, impaired driving in a commercial vehicle, and misdemeanor death by vehicle, but excludes any other misdemeanor traffic offense under Chapter 20 (Motor Vehicles) of the General Statutes.

Animal Welfare Penalty. The act amends G.S. 19A-35, penalty for failure to adequately care for animals. It is now a Class 3 misdemeanor for animal shelters, pet shops, boarding kennels, and other animal dealers to fail to properly house, feed, and water animals. It also eliminates a provision that had authorized the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture to apply fines levied because of violations toward reimbursement of funds the Director expended in providing for the welfare of the animals.

Livestock Dealers. The act amends G.S. 106-418.14, dealing with penalties under the Livestock Dealer Licensing Act, to classify a first offense as a Class 3 misdemeanor, and subsequent offenses as Class 2 misdemeanors.

Meat Inspections. The act amends G.S. 106-549.35(a), which sets out the punishment for violation of the meat inspection statutes. The offense is classified as a Class 2 misdemeanor. If the violation involves intent to defraud or distribution of adulterated food, the violation is a Class H felony, and may include a maximum fine of $10,000.

Poultry Products Inspections. The act amends G.S.106-549.59, dealing with the punishment for violations of the Poultry Products Inspections Act. The offense is classified as a Class 1 misdemeanor. Where the violation involves intent to defraud or distribution of adulterated items, the offense is a Class H felony, which may include a maximum $10,000 fine. The act further amends the statute to provide that a person who forcibly assaults, resists, or otherwise interferes with a person performing official duties under the Poultry Products Inspections Act is guilty of a Class 2 misdemeanor, and punishment may include a maximum $5,000 fine. If deadly or dangerous weapons are involved, the offense is a Class A1 misdemeanor and may include a maximum $10,000 fine.

Poultry Disposal. The act classifies the offense of improper disposal of dead or diseased poultry on commercial farms as a Class 1 misdemeanor.

Biological Residues. The act amends G.S. 106-549.88, which sets out the penalties for illegal acts involving biological residues in animals. The offense is classified as a Class 2 misdemeanor.

Protected Wild Animals. The act classifies the offense of possessing, transporting, or selling animals on a protected wild animal list as a Class 1 misdemeanor.

The act becomes effective December 1, 1999, and applies to acts committed on or after that date. (BC)

Juvenile Justice Technical Corrections

S.L. 1999-423 (HB 1216) makes several technical corrections to the Juvenile Justice Reform Act of 1998. The reference to the "Division of Youth Services" is deleted in several statutory provisions because the division no longer exists. The term is replaced with the "Office of Juvenile Justice." The act also replaces the phrase "adjudicated guilty of a delinquent act" with the term "adjudicated delinquent for an offense." This amendment was needed because a juvenile who commits a criminal offense and is tried in juvenile court is not found to be guilty of the offense, but is adjudicated delinquent.

The Director of Juvenile Justice is added to the list of voting members on the Governor's Crime Commission. The Assistant Director of the Intervention/Prevention Bureau and the Assistant to the Director of the Detention Bureau of the Office of Juvenile Justice are also added to the Governor's Crime Commission as nonvoting members.

The act changes the start date for the term of office for Juvenile Crime Prevention Council members from January 1 to July 1 to correspond with the fiscal year. The Council will be required to meet at least bi-monthly.

The act became effective July 1, 1999. (JM)

Superior Court Criminal Case Docketing

S.L. 1999-428 (SB 292) requires all superior court criminal cases to be calendared during an administrative hearing. This administrative hearing must be held within 60 days of indictment or at the next regularly scheduled session of court if later than 60 days. During the administrative hearing, the court must: determine the status of the defendant's representation by counsel; set discovery deadlines; hear pretrial motions or set such motions for hearing; and schedule subsequent administrative settings, if necessary. Also, the district attorney must inform the defendant of any plea arrangement and its terms, if such an arrangement has been made.

At the conclusion of the administrative hearing, the district attorney is required to announce a proposed trial date. The court shall set that date as the tentative trial date, unless the interests of justice require a different date. If justice so requires, the district attorney shall set another tentative trial date. The trial may not occur less than 30 days following the final administrative setting. If a case is not scheduled for trial within 120 days of indictment, then, upon motion of the defendant, the court may hold a hearing for the purpose of establishing a trial date.

The district attorney must publish the trial calendar at least 10 days before the cases are calendared for trial. The calendar may not contain cases that the district attorney does not reasonably expect to call for trial.

The act repeals G.S. 7A-49.3 which sets forth the current method of calendaring criminal cases in superior court. The act also amends G.S. 7A-61 (duties of the District Attorney) to require district attorneys to prosecute cases "in a timely manner."

The act becomes effective January 1, 2000. (TH)

Up Some Underage Sales Penalties

S.L. 1999-433 (SB 120) creates a new G.S. 18B-302A to provide for specific, minimum mandatory punishment for persons convicted of violating certain specified offenses involving the sale or gift to or possession of alcoholic beverages by persons under the age of 21. For a violation of the prohibition on selling or giving alcoholic beverages to a person under 21, a first offense has a minimum fine of $250 and a minimum of at least 25 hours community service. A second or subsequent offense has a minimum fine of $500 and a minimum of at least 150 hours community service. For a violation by a person 21 or older of the prohibition on purchasing and aiding and abetting a person under 21 in purchasing or possession of alcoholic beverages, a first

offense has a minimum fine of $500 and a minimum of at least 25 hours community service. A second or subsequent offense has a minimum fine of $1,000 and a minimum of at least 150 hours community service.

The act becomes effective December 1, 1999, and applies to offenses committed on or after that date. (SH)

Juvenile Community Service

S.L. 1999-444 (HB 661) clarifies the choice between two community service options within the range of dispositional alternatives available to a judge in the case of a Level 2 juvenile offender. The act makes it clear that the juvenile may be ordered to serve up to 200 hours of community service, but there is not a 100-hour minimum.

The act became effective July 1, 1999, and applies to offenses committed on or after that date. (BC)

Financial Identity Fraud

S.L. 1999-449 (HB 1279) creates a new criminal felony offense of financial identity fraud. The act makes it unlawful for a person to knowingly obtain, possess, or use, personal identifying information of another person without that person's consent, and with the intent to fraudulently represent that the person is the other person for the purpose of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences. A violation of this statute is a Class H felony unless the victim suffers arrest, detention, or conviction as a proximate result of the offense, in which case the offense shall be punished as a Class G felony. The act also permits a civil action to be brought to enjoin and restrain future acts, and to recover civil damages up to $5,000 per violation, or three times the actual damages, whichever amount is greater.

Financial identity fraud differs from existing law because it allows for prosecution when someone takes or copies another person's identifying information with the intent to defraud that person, even if he or she does not get to the next step of appropriating or attempting to appropriate the other's financial resources. Identifying information is defined as names, addresses, phone numbers, social security numbers, drivers license numbers, financial institutions' account numbers, credit and debit card numbers, PIN numbers, electronic signatures, and other numbers or information that can be used to access a person's financial resources. Using this information for purposes otherwise permitted under law is not a crime under this statute. The act allows the Attorney General to investigate violations of this statue and refer criminal prosecutions to the district attorney in the county where the crime is committed.

The act becomes effective December 1, 1999, and applies to offenses committed and violations occurring on or after that date. (WR)

Increase Child Abuse Penalty

S.L. 1999-451 (HB 160) creates a new, more severe penalty for certain cases of child abuse. It is now a Class C felony, rather than a Class E felony, if a parent or any other person providing care or supervision for a child less than 16 years of age intentionally inflicts a serious bodily injury or intentionally commits an assault resulting in serious bodily injury or in permanent or protracted loss or impairment of any mental or emotional function of the child. This change in punishment level will assure that the offender will serve an active prison sentence upon conviction and will significantly increase the amount of time the offender will be incarcerated. The presumptive minimum sentence for a Class E felony offender with no prior record is 20-25 months intermediate or active punishment. The presumptive minimum sentence for a Class C offender with no prior record is 58-73 months active punishment. As defined in the act, "serious

bodily injury" is any injury that creates or causes a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

The act becomes effective December 1, 1999, and applies to offenses committed on or after that date. (BC)

Strengthen Littering Law

S.L. 1999-454 (HB 222) increases the range of the minimum and maximum fines that may be assessed for littering offenses that are not committed for commercial purposes. For a first offense of littering in an amount up to 15 pounds the minimum fine is increased from $100 to $250, and the maximum fine is increased from $250 to $1,000. The minimum penalty for a subsequent offense is increased from $100 to $500, and the maximum fine is increased from $1,000 to $2,000. The minimum fine for an offense of littering in an amount between 15 pounds and 500 pounds is raised from $100 to $500, and the maximum amount is increased from $1,000 to $2,000.

The act requires community service in some instances where community service was merely permissive. When the littering is in an amount above 500 pounds or when the littering is done for commercial purposes the court must order the violator to remove the litter, repair areas damaged by the discarded litter, or perform community service relating to the removal of litter and repair of areas polluted by the litter. The act clarifies the definition of littering for "commercial purposes" as litter that is discarded by an entity conducting business for economic gain.

The act becomes effective December 1, 1999, and applies to offenses committed on or after that date. (BC)

Major Pending Legislation
Criminal Law

Enforce Gun Laws at Gun Shows

HB 1275 would require the promoter of a gun show to apply for and receive a permit from the sheriff of the county. It would require the promoter to make a good faith effort to ensure that every gun transaction is conducted through a federally licensed firearm dealer, who would be required to make a background check of the buyer. Although the bill did not pass the House, it is eligible because it imposes a fee. (WRG)

Studies
Legislative Research Commission

1999 Studies Bill

S.L. 1999-395, Sec. 2.1 (11) (HB 163, Sec. 2.1 (11)) authorizes the Legislative Research Commission to study the following criminal issues:

- Prohibiting a death sentence for mentally retarded persons.
- Prohibiting a death sentence obtained on the basis of race.
- Bail bond laws.

This section became effective July 1, 1999. (SH)

Chapter 7 Education

Shirley Iorio (SI), Robin Johnson (RJ), Sara Kamprath (SK)

Enacted Legislation
Public Schools

Evaluate Charter Schools

S.L. 1999-27 (HB 216) directs the State Board of Education (SBE) to continue for three years its review and evaluation of charter schools based on an analysis of the schools' impact on the delivery of services by traditional public schools, student progress in charter schools, best practices coming out of charter schools, and other information the SBE considers appropriate. The SBE's evaluation must include a determination and recommendation to the Joint Legislative Education Oversight Committee (JLEOC) as to whether to increase the number of charter schools, to modify the program, or to terminate the program.

The SBE must report to the JLEOC by January 1, 2002.

The act became effective July 1, 1999. (RJ)

Assistant Principal Provisional Certification

S.L. 1999-30 (SB 225), as amended by S.L. 1999-394 (HB 274), allows the State Board of Education (SBE) to issue one-year provisional assistant principal's certificates to employees of local boards of education (local board). A local board must determine there is a shortage of persons who hold or are qualified to hold a principal's certificate and the particular employee must enroll in an approved program leading to a masters degree in school administration before the provisional certificate expires. Effective August 5, 1999, the SBE also may issue a one-year provisional assistant principal's certificate to an employee who is enrolled in an approved masters in school administration program and is participating in the required internship under the masters program. The SBE may extend a provisional certificate for a total of no more than two additional years while the employee is completing the program.

The act also provides that an individual who holds a provisional assistant principal's certificate and who is employed as an assistant principal shall be considered a school administrator. A local board may enter into one-year contracts with a school administrator who holds a provisional assistant principal's certificate. However, if the school administrator held career status as a teacher in the local school administrative unit prior to being employed as an assistant principal and the SBE does not extend the school administrator's provisional assistant principal's certificate, the school administrator shall retain career status as a teacher.

Except as noted above, these changes became effective April 27, 1999. (SI)

School Personnel Law Changes

S.L. 1999-96 (SB 898) makes several changes to the law regarding teacher employment and dismissal, repeals the law that created the Professional Practices Board, and limits the noninstructional duties assigned to teachers.

Teacher Employment and Dismissal. The act amends G.S. 115C-325 (teacher employment and dismissal) to:

- Increase from five to ten the number of days within which a local board must hold a hearing if a teacher requests a dismissal hearing directly before the local board of education. This change does not apply to proceedings that involve a case manager.
- Authorize the superintendent to name a designee to be present at the case manager hearing.
- Build in time for the superintendent to obtain a transcript of the case manager hearing prior to a hearing before the local board.
- Decrease from ten to eight the number of days within which the superintendent must submit the list of witnesses that will be called at a board hearing when there has been a reduction in force.
- Change the date, from June 1 to June 15, when a local board must inform teachers whether their probationary contract will be renewed.

Noninstructional Duties. The act directs local boards to adopt rules and policies to:

- Limit, to the extent possible, the noninstructional duties assigned to all teachers.
- Assign extracurricular activities to teachers with initial certification or with at least 27 years of experience only if those teachers make a written request for this assignment.
- Minimize other noninstructional duties for teachers with initial certification or at least 27 years of experience.
- Distribute noninstructional duties equitably among employees.

A local board may temporarily suspend these rules and policies for individual schools if the board finds a compelling reason to do so. The act also directs the State Board of Education to revise its mentor program guidelines to reflect these changes.

The act became effective May 27, 1999. The sections dealing with teacher employment and dismissal apply to proceedings initiated on or after May 27, 1999. (SI)

Expand Assault-School Personnel

S.L. 1999-105 (SB 637). See **Criminal Law**.

Lateral Entry Simplified

S.L. 1999-108 (HB 1167) amends G.S. 115C-296.1, which was enacted in 1998 to provide an alternative lateral entry procedure for local school administrative units with teacher shortages. The act clarifies that an individual employed under that law as a teacher, who takes and passes the standard exam before initial employment and who is re-employed by the local board after one year, is eligible to receive an initial State teacher certificate.

The act became effective July 1, 1999, and applies to all persons hired under G.S. 115C-296.1, which expires September 1, 2002. (SI)

Special Needs Funding/Transportation

S.L. 1999-117 (SB 1075) specifies how the services for an out-of-state student, with a current individual education plan, will be funded while the student's eligibility for services in this State are determined. The State Board of Education also shall study transportation issues involving children with special needs.

The act became effective May 28, 1999. (SK)

Duty Free Period/All Teachers

S.L. 1999-163 (SB 1093) provides that a principal shall not make a teacher give up his or her duty free period on an ongoing, regular basis without the consent of the teacher.

The act became effective July 1, 1999, and applies beginning with the 1999-2000 school year. (SK)

Voluntary Shared Leave

S.L. 1999-170 (HB 820). See **Employment**.

No Guns at School Law/School Employees

S.L. 1999-211 (SB 1096). See **Criminal Law.**

Sunset/Term of Energy Savings Contracts

S.L. 1999-235 (SB 56). See **Local Government.**

Substitute Teachers

S.L. 1999-237, Sec. 8.9 (HB 168, Sec. 8.9) directs local school administrative units to determine the reasons when their average number of days due to teacher absences is higher than the statewide average. These units also must develop plans to decrease their averages.

This section became effective July 1, 1999. (RJ)

Teaching Fellows Administration Costs

S.L. 1999-237, Sec. 8.12 (HB 168, Sec. 8.12) authorizes the Public School Forum, which administers the Teaching Fellows Program, to use up to $150,000 annually from the fund balance to cover administration costs.

This section became effective July 1, 1999. (RJ)

Strengthen Alternative Schools/Alternative Learning Programs

S.L. 1999-237, Sec. 8.25 (HB 168, Sec. 8.25), as amended by S.L. 1999-456, Sec. 35 (HB 162, Sec. 35), directs each local board of education (local board) to establish at least one alternative learning program and to adopt guidelines for assigning students to this program. Local boards are encouraged not to assign to these programs any professional public school employee who has received within the last three years a less than above standard rating on a formal evaluation. The section limits funds in the Alternative Schools/At-Risk Student allotment to alternative learning programs, at-risk students, and school safety programs. It also directs the State Board of Education (SBE) to adopt policies defining alternative schools and alternative learning programs and to review teacher qualifications for these schools and programs. The SBE shall report to the Joint Legislative Education Oversight Committee by the convening of the 2000 Regular Session.

The provision requiring local boards to establish at least one alternative learning program becomes effective July 1, 2000. The remainder of the section became effective July 1, 1999. (RJ)

Expand School Breakfast Program

S.L. 1999-237, Sec. 8.26 (HB 168, Sec. 8.26) directs the State Board of Education to expand the school breakfast program to all students in kindergarten by the beginning of the 2000-2001 school year.

This section becomes effective January 1, 2000. (RJ)

Textbook Commission Membership Expansion

S.L. 1999-237, Sec. 8.30 (HB 168, Sec. 8.30) increases, from 14 to 23, the number of members on the Textbook Commission (Commission) and requires the Commission to meet four times a year or at the call of the chair. Each proposed textbook must be read by at least one expert in the discipline for which it would be used. External sources, Commission members, and textbook advisory committee members may qualify as experts for this purpose. The Commission may consider reviews from other individuals, but may not substitute these reviews for those of the certified expert. The section also requires evaluations of a proposed textbook to consider whether it is aligned with the Standard Course of Study.

This section becomes effective January 1, 2000. (RJ)

Pilot Program to Test and Evaluate a Revised School Accountability Model for the ABCs Plan

S.L. 1999-237, Sec. 8.36 (HB 168, Sec. 8.36) directs the State Board of Education (SBE) to establish a pilot program in up to five local school administrative units (units). The purpose is to determine whether modification of the model used to determine school performance under the current school accountability program (ABC's program) can lead to greater student mastery of tested subject matter and skills. The SBE shall disaggregate student performance within designated demographic groups or designated student performance groups, or both. Before a local board of education applies to participate in this program, it must hold a public meeting and pass a resolution approving the unit's participation. Personnel in schools that participate will be eligible for financial awards (maximum $750 for teachers and $325 for teacher assistants) if their schools meet the pilot program's goals. These awards are separate and may be in addition to awards under the ABC's program.

The SBE must evaluate annually the pilot program to determine whether there is improved student performance for students who qualify for free or reduced lunches and to compare student performance in the participating units to statewide performance under the ABC's program. The SBE must report to the Joint Legislative Education Oversight Committee (JLEOC) by November 15, 1999, March 15, 2000, and annually starting October 15, 2001. The JLEOC must study issues related to the development of a revised accountability model and may report to the 2000 Regular Session or the 2001 Session of the General Assembly.

The section became effective July 1, 1999, and expires with the payment of financial awards under the pilot program at the end of the 2004-2005 school year. (RJ)

Establishment of Division of Education Services/Review Disability Services

S.L. 1999-237, Sec. 11.4 (HB 168, Sec. 11.4). See **Human Resources**.

Crime Control Purchase Metal Detectors to Reduce Crime in Schools

S.L. 1999-237, Sec. 20.5 (HB 168, Sec. 20.5). See **State Government**.

School Employee Retirement Credit Changed

S.L. 1999-237, Sec. 28.26 (HB 168, Sec. 28.26). See **Employment.**

Lose Control Lose Your License

S.L. 1999-243 (SB 57), as amended by S.L. 1999-387, Sec. 4 (HB 1154, Sec. 4) amends the law for persons between the ages of 15 and 18 obtaining driver license privileges by conditioning their right to drive on not being expelled or suspended from school because of alcohol or drug violations, bringing illegal weapons on school property, or assaulting a teacher or other school personnel on school property.

Eligibility for Driving Eligibility Certificates. The act amends G.S. 20-11 (limited learners' permits and provisional drivers licenses) to add additional criteria for receiving a driving eligibility certificate (certificate). (Public schools, charter schools, community colleges, nonpublic schools, and home schools are required to issue certificates to persons between the ages of 15 and 18 who meet certain educational criteria. Certificates are a prerequisite for driver license privileges.) The act provides that a person is not eligible for a certificate if the person was expelled from school, suspended for more than ten consecutive days, or assigned to an alternative educational setting for more than ten consecutive days for one of the following incidents:

- The possession or sale of alcohol or an illegal controlled substance on school property.
- The bringing, possession, or use on school property of a gun, rifle, pistol, or other firearm, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive. (This does not include BB guns, stun guns, air rifles, air pistols, or other weapons.)
- The physical assault on a teacher or other school personnel on school property.

"School property" includes school premises, school buses, and school-sponsored curricular or extracurricular activities that occur on or off the physical premises of the school.

A certificate may not be issued until the student has exhausted all administrative appeals connected to the disciplinary action and one of the following conditions is met:

- The student is now 16 and the conduct in question happened before the student reached the age of 15.
- The conduct occurred after the student reached the age of 15, and at least one year after the student exhausted all administrative appeals.
- The student needs to drive to and from school, a drug or alcohol treatment counseling program, or a mental health treatment program, and no other transportation is available.

If a student is ineligible for a certificate or if the student's driving privileges are revoked due to ineligibility for a certificate, a certificate may be issued if, after six months from the date of ineligibility, the school administrator determines that:

- The student has returned to school and is making exemplary progress; or
- The disciplinary action was for the possession or sale of drugs or alcohol on school property, and the student subsequently attends and successfully completes a drug or alcohol treatment counseling program, as applicable.

Revocation of Driving Eligibility Certificate. The act requires the Division of Motor Vehicles (DMV) to revoke for one year a driver's permit or license when DMV receives notification that a person no longer meets the eligibility requirements for the certificate. A revocation is

effective the tenth day after notice of revocation is mailed to DMV. DMV must reinstate the driving privileges if the person presents a valid certificate. The act also prohibits DMV from issuing a drivers license to any adult, whose permit or license was suspended or revoked under this act, until that person is eligible for restoration of his or her driving privileges.

Rulemaking. The act requires the State Board of Education, the Secretary of Administration, and the State Board of Community Colleges to adopt rules for the issuance of certificates, to define exemplary student behavior, to define what constitutes successful completion of a drug or alcohol treatment counseling program, and to develop consent forms for the release of information to DMV. The State Board of Education must initiate and coordinate meetings with the other applicable State entities in order to develop coordinated rules, policies, and guidelines. These provisions became effective July 1, 1999.

Consent for Disclosure of Student Information to DMV. The act requires the State Board of Education, the Secretary of Administration, and the State Board of Community Colleges to develop forms for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to DMV that a student no longer meets the conditions for a certificate. The school may only disclose the statute under which the student is no longer eligible and may not disclose other information concerning the student's school record. This consent is a prerequisite for a certificate.

Duties of School Administrators. The act requires enumerated school administrators to sign certificates, obtain the consent for disclosure, and notify DMV when a student who received a certificate no longer meets the criteria.

Except as noted above, the act becomes effective July 1, 2000, and applies to anyone who obtains a learners permit or drivers license after December 1, 1997. The act applies only to conduct committed on or after July 1, 2000, by a person who is expelled, suspended, or placed in an alternative educational setting as a result of that conduct. (RJ)

Stop Threats/Acts of School Violence

S.L. 1999-257 (HB 517), as amended by S.L. 1999-387, Secs. 1-3 (HB 1154, Secs. 1-3), increases the criminal penalties for second and subsequent convictions for making bomb threats and perpetrating bomb hoaxes against public buildings, increases the criminal penalty for the possession or carrying of a bomb on educational property or to school sponsored activities, increases the criminal penalty for encouraging a minor to cause, encourage or aid a minor to possess or carry a bomb on educational property, creates civil liability of parents for certain acts by minors, requires the revocation of drivers license and learner's permits for certain criminal convictions, and requires a 365-day suspension for any student who makes a bomb threat or perpetrates a bomb hoax. The act also requires a number of studies.

Except as noted, the act became effective July 7, 1999, and applies to offenses committed on or after that date.

Bomb Threats and Hoaxes Against Public Buildings. The act amends G.S. 14-69.1 and G.S. 14-69.2, the criminal offenses of making a false bomb threat and perpetrating a hoax with a bomb. If a person is convicted of a second offense of making a false bomb threat against a public building within five years of the first conviction, the level of offense is increased from a Class H felony to a Class G felony. Likewise, if a person is convicted of a second offense of making a bomb hoax against a public building within five years of the first conviction, the level of offense is increased from a Class H felony to a Class G felony. The act defines a public building as:

- Any public or private school building or bus, or other property owned, used, or operated by a board of education, school, college, board of trustees, or directors.
- Hospitals.
- Any building housing only State, local, or federal government offices.
- Any office of State, local, or federal government located in a building that is not exclusively occupied by State, local, or federal government.

The act provides that a court may order restitution, including costs and consequential damages resulting from the disruption of the normal activity that would otherwise occur but for the bomb threat or hoax. These provisions become effective September 1, 1999, and apply to offenses committed on or after that date.

Criminal penalty for bombs on educational property. The act amends G.S. 14-269.2 by increasing from a Class I felony to a Class G felony the criminal offense of possessing or carrying any bomb, grenade, or powerful explosive on educational property. It also increases from a Class I felony to a Class G felony the offense of causing or encouraging a minor to possess or carry any bomb, grenade, or powerful explosive on educational property. The increased penalties do not apply to fireworks. These provisions became effective September 1, 1999, and apply to offenses committed on or after that date. Effective December 1, 1999, it also will be a Class G felony to possess or carry a bomb, grenade, or powerful explosive to a curricular or extracurricular activity sponsored by a school.

Drivers Licenses/Revocations. The act amends G.S. 20-13.2 and 20-17 (revocation of drivers licenses and learners permits), effective September 1, 1999, by requiring the Division of Motor Vehicles to revoke for one year a person's drivers' license or permit upon conviction of certain crimes.

DMV shall revoke for one year the drivers license or limited learner's permit of any person convicted of the following offenses:

- Malicious use of an explosive or incendiary device to damage property.
- Conspiracy to injure or damage by use of an explosive or incendiary device.
- Making a false bomb threat against a public building.
- Perpetrating a bomb hoax against a public building.
- Possessing or bringing a bomb or powerful explosive device onto educational property.
- Causing a minor to possess or bring a bomb or powerful explosive device onto educational property.

Civil Liability/Parents. The act creates a new law, G.S. 1-538.3, Negligent Supervision of Minor. This law allows a board of education or other entity that administers or controls educational property to bring a civil action to recover damages from a parent or guardian who has the care, custody, and control of an unemancipated minor. The board or other entity must prove by clear, cogent and convincing evidence that:

- The minor violated one of several enumerated criminal statutes, including malicious use of explosive, malicious damage to occupied property by use of an explosive, conspiracy to injure or damage by use of an explosive, making a false bomb threat against a public building, perpetrating a bomb hoax against a public building, bringing or causing a minor to bring a bomb onto educational property, or a felony offense involving injury to persons or property by use of a gun or other firearm.
- The offense occurred on educational property, which includes schools, colleges, community colleges, universities and property owned or used by those entities.
- The parent or guardian knew or reasonably should have known of the minor's likelihood to commit the act.
- The parent or guardian had the opportunity and ability to control the minor.
- The parent or guardian made no reasonable effort to correct, restrain, or properly supervise the minor.

If successful, the educational entity may recover actual compensatory and consequential damages up to $25,000 for the false bomb threat, bomb hoax, or possession of a bomb. It may recover actual compensatory and consequential damages to educational property resulting from the detonation of a bomb or discharge of a firearm up to $50,000. These provisions become effective September 1, 1999, and apply to offenses committed on or after that date.

Student Suspension. The act amends G.S. 115C-391 (student conduct) by requiring a local board of education to suspend for 365 calendar days any student who:

- Brings to school or possesses at school a firearm or explosive device.

- Make a false bomb threat against a school.
- Perpetrates a bomb hoax against a school.

Effective December 1, 1999, a local board of education also must suspend for 365 calendar days any student who commits one of these acts at a school-sponsored curricular or extra curricular activity. The local board may modify any of these suspensions on a case-by-case basis, including having the student placed in an alternative school or an alternative program.

School Violence Study. The act directs the Joint Legislative Education Oversight Committee, in conjunction with other entities, to study the issue of students who threaten to commit or who carry out acts of violence directed at schools and persons who are present at schools.

Dropout Study. The act also directs the State Board of Education to study the method for computing dropout rates for the ABCs School Accountability Plan. It must report to the Joint Legislative Education Oversight Committee on the results of this study. (RJ)

School Improvement Team Representatives Elected

S.L. 1999-271 (HB 1150) amends G.S. 115C-105.27, which governs school improvement teams. The act requires that the representatives of assistant principals, instructional personnel, instructional support personnel, and teachers assistants who serve on the school improvement team must be elected by their respective groups by secret ballot.

The act became effective July 1, 1999, and applies to school years beginning with the 1999-2000 school year. (SI)

Activity Buses Stop - RR Crossings

S.L. 1999-274 (HB 1054). See **Transportation**.

Teacher/Student/No Sex Acts-2

S.L. 1999-300 (SB 742). See **Criminal Law.**

Implementation of Student Standards

S.L. 1999-317 (SB 942) requires the State Board of Education (SBE) to develop an implementation plan for the Statewide Student Accountability Standards policy. The policy must include identification of resources and a plan for use of those resources to ensure appropriate early and ongoing assistance for students who need that assistance. The SBE must report progress in implementing those plans quarterly to the Joint Legislative Education Oversight Committee, the House and Senate Appropriations Subcommittees on Education/Higher Education, and the Joint Legislative Commission on Governmental Operations beginning October 1, 1999, and continuing through July 1, 2000.

The act became effective July 15, 1999. (SI)

Teacher Harassment Protection

S.L. 1999-352 (HB 1267) prohibits a school employee from being disciplined in any way as a result of the employee filing a written complaint alleging sexual harassment by students, other school employees, or members of a local board of education. The protection does not apply if the employee knows the report is false.

The act became effective July 22, 1999. (SK)

School Team Authority/School Calendar

S.L. 1999-373 (SB 977) reduces from ten to eight the number of days a local board of education may use for teacher workdays, additional instructional days, or other lawful purposes. These two days are shifted to individual schools giving the principal 11-12 days to schedule. Before scheduling these days, the principal is required to work with the school improvement team to determine when and for what purpose the days will be scheduled. However, if during the last two years the local school system has made up an average of at least eight days for school closing because of inclement weather, the local board may designate up to two of these days as additional make-up days to be scheduled after the last day of student attendance.

The act also makes it a duty of local boards of education and principals to establish a school improvement team each year to develop, review, and revise a school improvement plan. Local boards must adopt a policy to ensure that principals establish these school improvement teams and then work together with the teams to develop, review, and amend school improvement plans for their schools. The act also directs the Joint Legislative Education Oversight Committee to study issues related to the development of school calendars.

The act became effective July 1, 1999, and applies to all school years beginning with the 2000-2001 school year. (SI)

Weapons at School/Law Clarified

S.L. 1999-387 (HB 1154) makes a number of clarifying and conforming amendments to laws amended by legislation enacted earlier this Session. These changes include the following:

- Expands the mandatory 365-day school suspension to students who possess a firearm or explosive device on educational property or at a school-sponsored curricular or extracurricular activity off school property. These changes took effect August 4, 1999. (G.S. 115C-391(d1), as amended by S.L. 1999-257 (HB 517))
- Expands the mandatory 365-day school suspension to students who bring a firearm or explosive device to a school-sponsored curricular or extracurricular activity off educational property. These changes took effect August 4, 1999. (G.S. 115C-391(d1), as amended by S.L. 1999-257 (HB 517))
- Amends G.S. 115C-391(d1), mandatory school suspension for firearms and explosives, to conform the definition of "weapons" to the changes made to G.S. 14-269.2 (weapons on educational property) by S.L. 1999-211 (SB 1096). These changes, effective December 1, 1999, provide that if a person comes into possession of a weapon on educational property by taking or receiving the weapon from another person or by finding the weapon, and if the person then turns the weapon over to law enforcement officials as soon as practicable, the person is not guilty of a felony. If a student fits one of these circumstances, then he or she would not be subject to the mandatory 365-days suspension from school.
- Amends G.S.115C-391(d3), which requires a mandatory 365 days suspension for students who make bomb threats or perpetrate bomb hoaxes, so that the language conforms to the language in G.S. 115C-391(d1). These subsections are linked to G.S. 14-269.2 (weapons on educational property). These changes took effect August 4, 1999.
- Makes conforming changes to the enumerated student conduct that can lead to the denial of a drivers eligibility certificate under the new G.S. 20-11(n1), created by S.L. 1999-243 (Lose Control/Lose License). These changes become effective July 1, 2000. (RJ)

Commission On Children with Special Needs Repealed

S.L. 1999-395, Sec. 21B.1 (HB 163, Sec. 21B.1) repeals Article 12 of Chapter 120 of the General Statutes, which established the Commission on Children with Special Needs.

The repeal became effective July 1, 1999. (RJ)

Alternative Schools within Schools

S.L. 1999-397 (SB 1099) makes the following changes to laws related to alternative schools and programs:

- Requires school improvement plans (developed at the building level by teachers, administrators, and parents) to specify effective instructional practices and methods to improve academic performance of students at risk of academic failure or of dropping out of school. School improvement teams must review and revise their school improvement plans to incorporate these changes during the 1999-2000 school year.
- Directs the State Board of Education (SBE) to define the term, "at-risk student".
- Requires the SBE, as part of its evaluation of the effectiveness of alternative schools and learning programs, to apply the ABC's accountability model to measure the educational performance and growth of students placed in alternative schools and alternative learning programs. The SBE may modify the model if needed to address the specific characteristics of these schools and programs.
- Directs local boards of education to assess on a regular basis whether the unit's alternative schools and learning programs incorporate best practices, are staffed with well-trained personnel, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction.
- Requires the amendment of safe school plans, developed at the unit level, to include the services that will be provided to students assigned to alternative schools and alternative learning programs. These plans also must include various measures to evaluate the success of these schools and programs. Local boards of education must revise their current plans and submit them to the SBE by July 1, 2000, for the SBE's review.
- Effective January 1, 2000, creates a new G.S. 115C-105.48, which requires schools that refer students to alternative schools and alternative learning programs to document procedures used to identify a student, provide the reasons for the referral, and provide to the alternative school or learning program all relevant student records.

Except as noted above, the act became effective August 5, 1999. (RJ)

Joint Legislative Education Oversight Committee Changes

S.L. 1999-431, Sec. 3.7 (SB 437, Sec. 3.7) increases from 18 to 20 the number of members on the Joint Legislative Education Oversight Committee. Effective August 9, 1999, the terms began at that time and will expire upon the convening of the 2001 Regular Session of the General Assembly. (RJ)

Teacher Tenure/Consecutive Years of Service

S.L. 1999-456, Sec. 34 (HB 162, Sec. 34) adds a new subdivision to G.S. 115C-325(c), which governs the employment and dismissal of teachers. If a probationary teacher in a full-time permanent position does not work for at least 120 workdays in a school year because the teacher

is on sick leave, disability leave, or both, that school year is not considered a consecutive year of service or a break in the continuity in consecutive years of service for that teacher.

This section became effective August 13, 1999. (SI)

Higher Education
Community Colleges

Anson-Union Community College Established

S.L. 1999-60 (SB 1039) establishes a new multi-campus community college to serve Anson and Union Counties. The initial board of trustees of the new college shall select the name of the college. Anson Community College is abolished.

The act became effective May 19, 1999. (SI)

Student on Community College Board

S.L. 1999-61 (HB 244) increases the State Board of Community Colleges' (SBCC) membership from 20 to 21 by adding a student member. The president of the North Carolina Comprehensive Community College Student Government Association will be an ex officio, nonvoting member of the SBCC. If the president cannot serve, the Vice President of the Association shall serve. Any person serving as a student member of the SBCC must be a student in good standing at a North Carolina Community College.

The act became effective July 1, 1999. (SI)

Community College Campus Police

S.L. 1999-68 (HB 477) authorizes the board of trustees of any community college to establish a campus law enforcement agency and to employ campus police officers. These officers must meet the requirements of Chapter 17C of the General Statutes, the North Carolina Criminal Justice Education and Training Standards Commission, and shall have all the powers of law enforcement officers. The act also authorizes the board of trustees at each community college to choose to have its campus police trained and certified under Chapter 17C and Chapter 115D of the General Statutes (Community Colleges) rather than requesting certification as a company police.

The act became effective May 20, 1999. (SI)

Community College Technical Changes

S.L. 1999-84 (HB 260) amends various laws applicable to community colleges. The act makes the following changes:

- Corrects the name of the North Carolina Center for Applied Textile Technology.
- Repeals outdated language regarding articulation agreements between individual community colleges and four-year colleges or universities.
- Repeals G.S. 115D-5(e) regarding the establishment and operation of extension units.
- Repeals G.S. 115D-8 regarding a Community College Education Blueprint program that was never fully implemented or funded.
- Clarifies that the cost of telephone services, excluding data transmission, is a local responsibility.

- Amends existing language of the nondiscrimination policy regarding students so it conforms with federal law.
- Changes the name of the Department of Community Colleges to Community Colleges System Office, or Community Colleges System.

The act became effective May 21, 1999. (SI)

Community College Property Transfers

S.L. 1999-115 (HB 239). See **Local Government.**

Implementation of Performance Budgeting

S.L. 1999-237, Sec. 9.2 (HB 168, Sec. 9.2) adds a new section, G.S. 115D-31.3, performance budgeting, to the law regarding community colleges. The State Board of Community Colleges (SBCC) is directed to create new accountability measures and performance standards to be used for performance budgeting for the Community College System. The SBCC may use survey results as a performance standard only if the survey is statistically valid. The SBCC must review annually the accountability measures and performance standards to ensure that they are appropriate for use in performance budgeting.

Each institution that meets the new performance standards may carry forward up to 2% of the State funds allocated for that fiscal year. The funds carried forward can only be used for the purchase of equipment and initial program start-up costs excluding regular faculty salaries, and must be encumbered within 12 months of the next fiscal year. The funds cannot be used for continuing salary increases or for other obligations beyond the fiscal year into which they were carried forward.

There are five required performance measures:

- Progress of basic skills students.
- Passing rate for licensure and certification examinations.
- Goal completion of program completers.
- Employment status of graduates.
- Performance of students who transfer to the university system.

Colleges may choose one other performance measure from the list prepared by the SBCC.

This section became effective July 1, 1999, and institutions meeting the new performance standards can carry forward funds from the 2000-2001 fiscal year to the 2001-2002 fiscal year and at the end of subsequent fiscal years. (SI)

Over-Realized Tuition and Fee Receipts Transferred to the Equipment Reserve Fund

S.L. 1999-237, Sec. 9.3 (HB 168, Sec. 9.3) directs the State Board of Community Colleges to transfer to the Equipment Reserve Fund the amount of receipts from community college tuition and fees that exceed the amount certified in General Fund Codes at the end of the fiscal year.

This section became effective June 30, 1999, and applies to the 1998-99 fiscal year. (SI)

Financial Assistance for Community College Students

S.L. 1999-237, Sec. 9.4 (HB 168, Sec. 9.4) repeals G.S. 115D-40, which created the Community College Scholarship Fund. The section also directs the Community Colleges System Office to use $10,000,000 of the funds appropriated for the 1999-2001 fiscal biennium to provide

the largest financial need-based student assistance program in the history of the North Carolina Community College System. The State Board of Community Colleges (SBCC) must adopt rules and policies for the disbursement of need-based financial assistance, and may contract with the State Education Assistance Authority for administration of these funds. The funds shall not revert at the end of each fiscal year. Students must apply for federal Pell Grants to be eligible for this program. This financial aid is intended for the neediest students who are not eligible for other financial aid programs that fully cover the required educational expenses of these students. The SBCC may use some of these funds as short-term loans to students who anticipate receiving the federal HOPE or Lifetime Learning Tax Credits. The SBCC must ensure that there is at least one counselor at each community college to inform students about federal programs and funds available to assist community college students.

This section became effective July 1, 1999. (SI)

No Tuition or Fees for Volunteer Firefighters and EMS Workers

S.L. 1999-237, Sec. 9.15 (HB 168, Sec. 9.15) prohibits the State Board of Community Colleges from charging tuition or fees to volunteer firefighters and volunteer Emergency Medical Services (EMS) workers for courses required for certification.

This section became effective July 1, 1999. (SI)

Higher Education
Colleges & Universities

UNC/Horace Williams Campus

S.L. 1999-234 (HB 1134) creates the Horace Williams Campus (Campus) to be associated with the University of North Carolina at Chapel Hill. The purpose of the Campus is to bring together business, industry and academia similar to the Centennial Campus at North Carolina State University.

Revenue Bonds. The Board of Governors may issue revenue bonds to pay all or part of the cost of any project on the Campus. These projects may include administration buildings, libraries, research or instructional facilities, roads, water, sewer, parking, and other facilities related to the operation of the Campus. The bonds are payable from revenues derived from leases, rentals, charges, and fees set by the Board of Governors.

Umstead Act Exemption. Much of the revenue generated from the Campus will come from the lease of office space to private industry. As a general rule, it is unlawful under the Umstead Act for the State to lease space in a State-owned building for the purpose of operating a business. The Campus is exempted from these provisions of the Umstead Act.

Trust Fund. The proceeds from all monies received through the development of the Campus must be credited to a special, nonreverting trust fund. The money in the fund may be used only for the development of the Campus.

The act became effective July 1, 1999. (SK)

UNC Enrollment Plan

S.L. 1999-237, Sec. 10.8 (HB 168, Sec. 10.8) makes a number of appropriations to help The University of North Carolina Board of Governors (BOG) carry out its plan for meeting the increasing student enrollment over the next decade. Ten of the sixteen constituent institutions are directed to enroll a larger share of the new students. Seven of the ten constituent

institutions currently have underutilized capacity and are expected to grow twenty percent by the fall of 2003. The BOG shall make an annual report by December 15 to the JLEOC on enrollment planning, current and anticipated growth, and management capacity for meeting the enrollment demands. The reports shall continue through December 2005.

This section became effective July 1, 1999. (SK)

Explanation of Federal Tax Credits Available for Educational Purposes

S.L. 1999-237, Section 10.11 (HB 168, Sec. 10.11) directs each constituent institution of The University of North Carolina and each community college to notify students and parents about the Hope and Lifetime Learning Credits available for educational purposes. Students and parents shall receive information about these tax credits at the same time the institution notifies them regarding the amount of tuition and fees due for a calendar year.

This section became effective July 1, 1999. (SK)

North Carolina Progress Board

S.L. 1999-237, Sec. 10.12 (HB 168, Sec. 10.12) amends the North Carolina Progress Board (Board) as codified in Part 2A of Article 9 of Chapter 143B of the General Statutes. The Board is removed from the Department of Administration and located administratively under the Board of Governors of The University of North Carolina. The Board shall be located at North Carolina State University (NCSU) and the Chancellor of NCSU shall appoint the Executive Director. Membership on the Board shall increase from 14 to 21 members.

The Board is directed to submit a report every five years, beginning in 2001, which updates the vision for the State's progress over the next 20 to 30 years. The Board shall submit a report by the convening of each odd-numbered session, on specific milestones to meet its mission.

This section became effective June 30, 1999. (SK)

UNC General Administration Flexibility

S.L. 1999-237, Sec. 10.14 (HB 168, Sec. 10.14) allows any current operations appropriations credit balance remaining in the Office of General Administration of The University of North Carolina budget to be carried forward to the next fiscal year. The funds may be used for one-time expenditures that will not impose additional financial obligations on the State. The amount carried forward shall not exceed 2½% of the General Fund appropriation.

This section also directs the President of The University of North Carolina (President) to receive these funds and have the same responsibilities, with respect to these appropriations, as does the Chancellor of a special responsibility constituent institution. The President may establish procedures for transferring these funds to the constituent institutions for nonrecurring expenditures. All actions taken by the President under this provision are subject to audit by the State Auditor.

This section became effective July 1, 1999. (SK)

Major Pending Legislation

Bonds for Higher Education

See **Taxation.**

Lotteries for Higher Education

See **Taxation.**

Local Option Sales Taxes for Schools

See **Taxation.**

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. 2.1 (3) (HB 163, Sec. 2.1 (3)) authorizes the Legislative Research Commission to study the following education issues:

- Driver education programs.
- Seat belts on school buses.
- Resolution of conflicts between boards of education and county commissioners.
- School board reviews of applicable court orders.
- The election, terms, and constitution of the Board of Governors of The University of North Carolina. (SK)

This section became effective July 1, 1999.

New Independent Studies/Commissions

Commission on Improving the Academic Achievement of Minority and At-Risk Students

S.L. 1999-395, Part XV (HB 163, Part XV) creates the Commission on Improving the Academic Achievement of Minority and At-Risk Students (Commission). The Commission shall focus on programs that have been successful in delivering improved achievement, reducing school discipline and behavioral problems, reducing minority and at-risk student dropouts and improving relations between parents, students, and schools. The Commission shall make an interim report to the General Assembly prior to the 2000 Short Session and a final report prior to the 2001 Regular Session.

This section became effective July 1, 1999. (SK)

Joint Select Committee on Higher Education Facilities Needs Creation

S.L. 1999-395, Part XXI (HB 163, Part XXI) creates the Joint Select Committee on Higher Education Facilities Needs (Committee). The Committee shall study the facility needs of The University of North Carolina and the Community College System. The Committee shall examine relevant reports on higher education facility needs, alternative funding methods, and repair and maintenance needs of higher education facilities. The Committee may report to the 2000 Short Session or the 2001 Regular Session upon its convening.

This section became effective July 1, 1999. (SK)

Commission On Children with Special Needs

S.L. 1999-395, Part XXIB (HB 163, Part XXIB) creates the Study Commission on Children with Special Needs to study issues related to meeting the educational needs of children with special needs, including alternative funding methods. It may file an interim report with the General Assembly before the 2000 Regular Session, and shall report to the 2001 General Assembly upon its convening.

This section became effective July 1, 1999. (RJ)

Referrals to Existing Commissions/Committees

Education Oversight Studies

The Joint Legislative Education Oversight Committee (JLEOC) shall study the following issues:

- Central Office Administrator Salaries. S.L. 1999-237, Sec. 8.21 (HB 168, Sec. 8.21).
- Need for School Nurses. S.L. 1999-237, Sec. 8.23 (HB 168, Sec. 8.23).
- Teacher Assistants Salaries. S.L. 1999-237, Sec. 8.32 (HB 168, Sec. 8.32).
- Revised School Accountability Model for the ABCs Plan. S.L. 1999-237, Sec. 8.36 (HB 168, Sec. 8.36).
- Cooperative High School Education Program. S.L. 1999-237, Sec. 9.1 (HB 168, Sec. 9.1).
- Students' Threats and Acts of Violence. S.L. 1999-257 (HB 517).
- The Development of the School Calendar. S.L. 1999-373 (SB 977).

The JLEOC may study the following issues:

- Differentiated Diplomas. S.L. 1999-237, Sec. 8.31 (HB 168, Sec. 8.31).
- Streamlining Community College Construction Process. S.L. 1999-237, Sec. 9.14 (HB 168, Sec. 9.14).
- Pre-kindergarten Programs. S.L. 1999-395, Pt. XII (HB 163, Pt. XII).

Referrals to Departments, Agencies, Etc.

State Board of Education

- Effectiveness of Charter Schools. S.L. 1999-27 (HB 216).
- ESL Teachers. S.L. 1999-237, Sec. 8.10(b) (HB 168, Sec. 8.10(b)).
- Funds for Student Accountability Standards. S.L. 1999-237, Sec. 8.17 (HB 168, Sec. 8.17).
- High School Exit Exams. S.L. 1999-237, Sec. 8.20 (HB 168, Sec. 8.20).
- Mentor Program. S.L. 1999-237, Sec. 8.22 (HB 168, Sec. 8.22).
- School Transportation for Children with Special Needs. S.L. 1999-237, Sec. 8.24 (HB 168, Sec. 8.24).
- Strengthen Alternative Schools/Alternative Learning Programs. S.L. 1999-237, Sec. 8.25 (HB 168, Sec. 8.25), as amended by S.L. 1999-456, Sec. 35 (HB 162, Sec. 35).
- Charter Schools/ADM Reduction. S.L. 1999-237, Sec. 8.28(b) (HB 168, Sec. 8.28(b)).
- The Relationship between School Size and Student Behavior and Performance. S.L. 1999-237, Sec. 8.33 (HB 168, Sec. 8.33).
- Pilot Program to Test and Evaluate a Revised School Accountability Model for the ABCs Plan. S.L. 1999-237, Sec. 8.36 (HB 168, Sec. 8.36).
- Computation of Dropout Rates. S.L. 1999-257 (HB 517).

Community Colleges

- Employment of Community College Faculty. S.L. 1999-237, Sec. 9 (HB 168, Sec. 9).
- Cooperative High School Education Program Accountability. S.L. 1999-237, Sec. 9.1 (HB 168, Sec. 9.1).
- Implementation of Performance Budgeting. S.L. 1999-237, Sec. 9.2 (HB 168, Sec. 9.2).
- Adult High School Program. S.L. 1999-237, Sec. 9.8 (HB 168, Sec. 9.8).
- Delivery of Workforce Training. S.L. 1999-237, Sec. 9.11(f) (HB 168, Sec. 9.11(f)).

UNC Board of Governors

- UNC Enrollment Plan. S.L. 1999-237, Sec. 10.8 (HB 168, Sec. 10.8).
- Martin Luther King Race Relations Research Center/Study Site Location. S.L. 1999-237, Sec. 10.17 (HB 168, Sec. 10.17).
- Faculty Salaries. S.L. 1999-237, Sec. 10.20 (HB 168, Sec. 10.20).
- Prepaid Tuition Plans and College Savings Plans. S.L. 1999-237, Sec. 10.21 (HB 168, Sec. 10.21).

Education Cabinet

- Cooperation in Education Information Technology. S.L. 1999-237, Sec. 8.34 (HB 168, Sec. 8.34).

Chapter 8
Employment

Theresa Matula (TM)

Enacted Legislation
General Employment

"Family Friendly" UI Exception

S.L. 1999-196 (HB 277). See **Insurance.**

Workforce Training

S.L. 1999-237, Sec. 9.11(f) (HB 168, Sec. 9.11(f)). See **Education.**

Youth Employment Certificates

S.L. 1999-237, Sec. 14.1 (HB 168, Sec. 14.1) allows the Commissioner of Labor to issue youth employment certificates both directly and electronically.

The act became effective July 1, 1999. (TM)

Omnibus ESC Changes

S.L. 1999-340 (HB 276). See **Insurance.**

OSHA Witness Statements

S.L. 1999-364 (SB 370). See **Civil Law.**

Teachers and State Employees-General

Voluntary Shared Leave

S.L. 1999-170 (HB 820) directs the State Personnel Commission and the State Board of Education to adopt rules and policies allowing State agency employees and public school employees to share leave. The leave may only be shared with an "immediate family member" which is defined as a spouse, parent, child, brother, sister, grandparent, or grandchild, including step, half, and in-law relationships.

The act became effective June 9, 1999. (TM)

Career Status for Former Judicial Employees Transferred to the Office of Juvenile Justice

S.L. 1999-237, Sec. 21.14 (HB 168, Sec. 21.14) clarifies career status under Chapter 126 (State Personnel System) of the General Statutes for employees in positions transferred from the Judicial Department to the Office of Juvenile Justice during FY 1998-99, or as provided in S.L.

1999-237. Provided the transferred employee has been continuously employed by the State prior to the date of transfer, the employee shall receive credit for those months of service and upon attaining 24 months of continuous employment in a permanent position with the State, the employee shall become a career State employee.

The act became effective July 1, 1999. (TM)

Travel Rates of State Employees

S.L. 1999-237, Sec. 28.20 (HB 168, Sec. 28.20). See **State Government.**

Repeal on Sunset of Flexible Benefits Plan

S.L. 1999-237, Sec. 28.27(a) (HB 168, Sec. 28.27(a)) removes a December 31, 1999 sunset provision and allows administrative expenses of the flexible benefits program to be paid by the employer's share of FICA contribution savings. The flexible benefits program (NC Flex) encompasses the dependent care assistance program and the flexible compensation plan for State employees.

The act became effective July 1, 1999. (TM)

State Employee Health Benefit Plan/Enhanced Drug Benefits

S.L. 1999-237, Section 28.28.(a-b) (HB 168, Section 28.28.(a-b)) amends the current law on prescription drugs covered by the Teachers' and State Employees' Comprehensive Major Medical Plan. It continues the Plan's allowable charges for prescription legend drugs at ninety percent (90%) of the average wholesale price, allows a dispensing fee of $6.00 per prescription, and provides that the Plan will pay allowable charges for each outpatient prescription drug less the following copayment:

- $10.00 for a generic prescription.
- $15.00 for each branded prescription.
- $20.00 for each branded prescription with a generic equivalent drug.

This section becomes effective January 1, 2000. (TM)

Exempt Position Clarification

S.L. 1999-253 (HB 1104) amends the law that allows the Governor, elected department head, or State Board of Education to designate a previous policymaking position as exempt from certain provisions of Chapter 126 (State Personnel System).

The act became effective July 2, 1999. (TM)

North Carolina Employee Deferred Compensation Plan

S.L. 1999-456, Sec. 42 (HB 162, Sec. 42) provides that all assets of the North Carolina Public Employee Deferred Compensation Plan (Plan), including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto are held in a trust for the exclusive benefit of the Plan participants and their beneficiaries. Previously, assets were to remain solely the property and rights of the State subject only to the claims of the State's general creditors. This change reflects a change at the federal level.

The act became effective August 13, 1999. (TM)

Teachers and State Employees - Retirement

Purchase of Part-Time Service

S.L. 1999-71 (HB 722) allows a member with five or more years of membership service in the Teachers and State Employees Retirement System to purchase service rendered while a permanent part-time teacher or State employee and full-time student. In order to qualify, the member must have been in a permanent part-time position requiring at least 20 hours per week, and the part-time service must have been rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program.

The act became effective July 1, 1999. (TM)

Workers Comp./AFC Years

S.L. 1999-158 (SB 214) provides an average final compensation (AFC) calculation method for members of the Local Governmental Employees' Retirement System (LGERS) and members of the Teachers' and State Employees' Retirement System (TSERS) who were on a leave of absence without pay while receiving Workers Compensation. This method will allow members to purchase service for those years the member was on leave of absence if it occurred during a period that would have produced the highest average annual compensation.

The act became effective July 1, 1999. (TM)

Dues Deduction for Retiree Organizations Authorized

S.L. 1999-237, Sec. 23 (HB 168, Sec. 23) allows a member of the Teachers and State Employees Retirement System who is a member of a retirees' association to authorize a periodic deduction from their retirement benefits to be paid to the retirees' association. The retirees' association must have at least 2,000 members, the majority of whom are active or retired employees and may not engage in collective bargaining. Previously only employees' associations were authorized.

The act became effective July 1, 1999. (TM)

Retirement System Transfer

S.L. 1999-237, Sec. 28.24 (HB 168, Sec. 28.24) allows members of the Consolidated Judicial Retirement System to transfer creditable service from the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System to the Consolidated Judicial Retirement System.

The act became effective July 1, 1999. (TM)

Repeal Retirement Exclusion

S.L. 1999-237, Sec. 28.25 (HB 168, Sec. 28.25) repeals the law that required a member of the Consolidated Judicial Retirement System to forgo retirement benefits or receive reduced benefits while serving as a judicial officer in the federal courts.

The act became effective July 1, 1999. (TM)

School Employee Retirement Credit Changed

S.L. 1999-237, Sec. 28.26 (HB 168, Sec. 28.26) amends the public school laws to allow retiring school employees to convert accumulated annual leave over 30 days to sick leave at the time of retirement. This leave may be used for creditable service at retirement in accordance with G.S. 135-4(e).

The act became effective July 1, 1999. (TM)

Local Government Employees - Retirement

Local Government Retirement Definition

S.L. 1999-167 (SB 638), as amended by S.L. 1999-456, Sec. 37 (HB 162, Sec. 37) amends the law regarding the definition of "employee" and "employer" in the Local Governmental Employees' Retirement System (LGERS) to include full-time paid firemen employed by a fire department that serves any part of a city or county and is supported in whole or in part by municipal or county funds.

The act became effective June 8, 1999. (TM)

Workers Compensation

Workers' Comp. And UIM Insurance

S.L. 1999-195 (HB 991). See **Insurance.**

Workers' Comp/Med. Provider Contact

S.L. 1999-150 (SB 1113) removes from the Industrial Commission the responsibility for adopting rules governing methods of oral and written communications between an employer paying compensation under Chapter 97 of the General Statutes (Workers' Compensation Act) and medical care providers.

The act became effective June 4, 1999. (TM)

Other-Employment Related

State Employee Health Benefit Plan/Optional Participation by Firemen, Rescue Squad Workers, and Members of the National Guard

S.L. 1999-237, Sec. 28.29 (HB 168, Sec. 28.29) provides that North Carolina firemen, rescue squad workers, and members of the national guard, and certain of their dependents, who are not eligible for any other type of comprehensive group health insurance or other comprehensive group health benefits, and who have been without any form of group health insurance or other comprehensive group health benefit coverage for at least six months, may participate in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

The act became effective July 1, 1999. (TM)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. 2.1 (1)a-d and Sec. 2.1(7) (HB 163, Sec. 2.1 (1)a-d and Sec. 2.1(7)) authorizes the Legislative Research Commission to study the following employment and personnel issues:

- Defined contribution pension plan for State employees and teachers.
- State agencies' customer service quality assurance.
- Administrative process for State employee grievances.
- State employee comprehensive compensation system.
- Protection of youth labor in entertainment industry.
- Employment security and unemployment insurance tax issues.

This section became effective July 1, 1999. (TM)

New Independent Studies/Commissions

Workforce Development Commission

S.L. 1999-237, Sec. 16.15 (HB 168, Sec. 16.15). See **Local Government.**

Job Training Study Commission

S.L. 1999-395, Part XIV (HB 163, Part XIV) creates a Legislative Study Commission on Job Training Programs to review State and federally funded job training programs and services currently in existence to determine the feasibility of elimination or consolidation.

The Commission may report to the General Assembly, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Education Oversight Committee not later than the convening of the 1999 General Assembly, 2000 Regular Session, or than the convening of the 2001 General Assembly. The report shall identify each job training program operating in the State and recommend whether each program should be expanded, continued without change, abolished, consolidated with another program, or otherwise modified, including implementation components.

This section became effective July 1, 1999. (TM)

Ergonomics Program and Study

S.L. 1999-395, Part XIX (HB 163, Part XIX) creates the Legislative Study Commission on Occupational Musculoskeletal Disorders to study the causes, frequency, costs, and prevention of occupational musculoskeletal disorders including, but not limited to, sprains, strains, and repetitive motion disorders.

By April 1, 2000, the Commission shall report to the Joint Legislative Commission on Governmental Operations and to the Senate and House Appropriations Subcommittees on Natural and Economic Resources its findings regarding the prevention of occupational musculoskeletal disorders, including recommendations regarding an ergonomics standard.

This section became effective July 1, 1999. (TM)

Chapter 9
Environment and Natural Resources

George Givens (GG), Hannah Holm (HH), Jeff Hudson (JH), Rick Zechini (RZ),

Enacted Legislation
Air Quality

Ambient Air Quality Improvements

S.L. 1999-328 (SB 953), as amended by S.L. 1999-456, Sec. 69 (HB 162, Sec. 69), contains provisions that set Statewide air quality goals, regulate the sulfur content of motor fuel, expand the motor vehicle emissions inspection and maintenance (I/M) program, create incentives for voluntary reductions in air pollution, and address the air quality implications of transportation planning decisions.

I. Statewide Goals.

The act sets the following goals for the State to achieve by July 1, 2009:

- Reduce emissions of nitrogen oxides (NOx) from all sources by 25%.
- Reduce the growth of vehicle miles traveled (VMT) by 25%.

II. Sulfur Content of Motor Fuels.

The act prohibits the manufacture or sale of gasoline with a concentration of sulfur greater than 30 parts/million. However, a person may manufacture or sell gasoline with a concentration of sulfur up to 80 parts/million if the average concentration of sulfur in the gasoline manufactured or sold by the person in a one-year period is less than 30 parts/million. This provision will become effective January 1, 2004, unless the United States Environmental Protection Agency (EPA) adopts a regulation that limits the sulfur content of gasoline to a concentration equal to or less than this limit in which case this provision will become effective on the same date the federal regulation becomes applicable in this State. In additions, if the EPA sets a sulfur limit different than the limit set by this act, the Environmental Review Commission (ERC) will review the limit and report its findings to the General Assembly.

III. Motor Vehicle Inspection and Maintenance.

Enhancement and Expansion of Emissions Testing. The act provides that the I/M program will be enhanced by replacing the current emissions test, which measures the emissions of a vehicle while it idles, with a test that simulates acceleration while measuring emissions. It also provides that the I/M program will be expanded to include additional counties according to the schedule set out in the following table. The act provides that the I/M program will use the new test and be expanded to additional counties only if the General Assembly increases the fee for a motor vehicle emissions inspection prior to January 1, 2001.

EMISSIONS INSPECTION PROGRAM EXPANSION SCHEDULE (New Test)	
July 1, 2002	Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, Wake (counties where emissions tests are already required)
July 1, 2003	Catawba, Cumberland, Davidson, Iredell, Johnston, Rowan
January 1, 2004	Alamance, Chatham, Franklin, Lee, Lincoln, Moore, Randolph, Stanley
July 1, 2004	Buncombe, Cleveland, Granville, Harnett, Rockingham
January 1, 2005	Edgecombe, Lenoir, Nash, Pitt, Robeson, Wayne, Wilson

July 1, 2005	Burke, Caldwell, Haywood, Henderson, Rutherford, Stokes, Surry, Wilkes
January 1, 2006	Brunswick, Carteret, Craven, New Hanover, Onslow

After July 1, 2006, the Environmental Management Commission (EMC) may require emissions testing in additional counties. The determination to require emissions testing in an additional county must be made on the basis of population and travel patterns. And the EMC may not require emissions testing in any county where the population is less than 40,000 or the number of vehicle miles traveled per day is less than 900,000.

Study Appropriate Fee for Motor Vehicle Inspections. The Department of Environment and Natural Resources (DENR) shall consult with the Division of Motor Vehicles in the Department of Transportation (DOT) and the affected parties to determine what constitutes a reasonable fee for a motor vehicle emissions inspection under the current I/M program and under the enhanced I/M program. DENR must report its findings and recommendations to the ERC by February 1, 2000. The ERC will recommend legislation to increase the fee for a motor vehicle emissions inspection to the 2000 Regular Session of the 1999 General Assembly.

Miscellaneous Provisions. The act additionally:

- Broadens the class of vehicles subject to emissions inspections by removing an exemption for vehicles not powered by gasoline or designed to be powered by gasoline. However, the EMC may not require emissions testing of diesel-powered vehicles prior to July 1, 2001.
- Authorizes the EMC to require that motor vehicle emissions be monitored while a vehicle is in operation by means of on-board diagnostic equipment (OBD) installed by the vehicle manufacturer. The EMC may also require that vehicle manufacturers make available all information necessary to analyze the data compiled by OBD.
- Clarifies that the EMC may not require that inspections be performed by centralized, test-only stations.
- Directs the EMC to develop and adopt incentives to promote voluntary reductions of emissions of air contaminants from industrial sources, including an emissions banking and trading system and credit for voluntary early reductions.
- Directs the EMC to develop and adopt rules governing the certification of inspectors of tanks used to transport motor fuel and to require that inspections of these tanks be performed only by certified personnel.
- Directs the EMC to develop and adopt rules governing the sale and service of motor vehicle exhaust emissions analyzers and require that sellers of the analyzers provide adequate surety to purchasers for the performance of contractual obligations related to the sale and service of the analyzers.

IV. State Agency Goals, Plans, Duties, and Reports; Other Provisions.

Goals and plans. The act sets a goal that by January 1, 2004, at least 75% of State purchases of new and replacement light duty vehicles will be either alternative-fueled vehicles or low emission vehicles. The act also requires the development of plans under which 50% of new and replacement school buses and public transportation buses in the State's most populous counties will be alternative-fueled or low emissions vehicles by January 1, 2004.

Incentives. State agencies must develop incentives to reduce emissions generated by job-related travel by both State and private sector employees.

Rulemaking. By October 1, 1999, the EMC shall initiate rulemaking to regulate the emissions of NOx from complex sources (such as shopping malls and parking decks).

Transportation Planning. The act creates a new article in the General Statutes governing the Department of Transportation (DOT). The article addresses planning issues by:

- Directing DOT to consider design alternatives for major projects that will facilitate the cost-effective interface of the project with other projects (including highway, airport, rail, bus, bicycle, and pedestrian facilities), with the goal of maximizing travel options and minimizing air pollution.
- Directing Metropolitan Planning Organizations (MPOs) to base their transportation plans and determinations of conformity with federal air quality requirements on the

most recent travel demand models approved by the MPOs and DOT. MPOs must also update their transportation plans in accordance with federal requirements.

- Directing DOT, the MPOs, and DENR to jointly evaluate and adjust the regional boundaries defined in regional travel demand models at least every five years to ensure that the boundaries adequately reflect current demographic and travel patterns and the effects of these patterns on air quality.
- Directing DOT and DENR to convene a study group to examine options to maximize positive impacts and minimize adverse impacts of transportation investments on air quality in each major travel corridor that has had air quality violations in the previous year or that affects an area that has had air quality violations in the previous year. Each study group must include representatives from DOT, DENR, and affected units of local government, private businesses, and nonprofit public interest organizations.

Tank Tightness Testing. The EMC shall adopt and DENR shall enforce rules governing tank tightness testing procedures and the certification of people who conduct tank tightness testing for underground storage tanks used to store petroleum or hazardous substances.

Effective date. Except as otherwise noted, the act became effective July 21, 1999. (HH)

Environmental Health

Revise Certain Lodging Rules

S.L. 1999-77 (HB 1127) directs the Division of Environmental Health (DEH) of the Department of Environment and Natural Resources to review the rules regarding the washing and sanitizing of coffee pots and ice buckets provided by lodging establishments in guest rooms. DEH shall recommend revised rules to the Commission for Health Services (CHS). DEH must consult with representatives of the affected industry and the various agencies responsible for implementing these rules. The current rules are suspended until revised rules are adopted. CHS must adopt the revised rules as temporary rules no later than January 31, 2000.

The act became effective May 5, 1999. (RZ)

Fisheries

Protect Certain Cultch Planting Areas

S.L. 1999-143 (SB 1047) prohibits the taking of shellfish within 150 feet of a publicly owned pier under which the Division of Marine Fisheries has deposited cultch material. A violation of this prohibition is a Class 3 misdemeanor. The act became effective September 1, 1999 and applies to violations that occur on or after that date. (HH)

Amend Fishery Resource Grant Program

S.L. 1999-162 (SB 1048) amends the Fishery Resource Grant Program (FRGP) by creating a Grants Committee to replace the Marine Fisheries Commission as the entity responsible for setting priorities, reviewing applications, and awarding grants under the FRGP. The Sea Grant College Program's report on the FRGP is due annually on January 1 to the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture.

The act became effective June 8, 1999. (RZ)

Core Sound Moratorium/Crab License

S.L. 1999-209 (SB 249), as amended by S.L. 1999-456, Sec. 70 (HB 162, Sec. 70) amends various marine fisheries laws and the cruelty to animals statute.

Core Sound Moratorium. The act extends the moratorium on issuing shellfish cultivation leases in Core Sound from July 1, 1999 to October 1, 2001. The Division of Marine Fisheries and the Primary Investigator must report the results of shellfish and human-use mapping of Core Sound to the Joint Legislative Commission on Seafood and Aquaculture by October 1, 1999.

Crab License. The act establishes an interim crab license that is effective from July 1, 1999 through October 1, 2000. The Marine Fisheries Commission may adopt rules that allow the landing and sale of crabs taken incidentally in the course of other commercial fishing operations.

Fishing Licenses – General. The act:

- Authorizes, rather than requires, the Secretary of Environment and Natural Resources to require that fisheries license agents be bonded.
- Authorizes the Division of Marine Fisheries to issue a license prior to the date on which the license becomes effective and to retain and spend revenues generated from a license issued in this manner during the following license year. This provision became effective June 30, 1999.
- Requires the Department of Environment and Natural Resources to report to the Joint Legislative Commission on Seafood and Aquaculture on the use of funds derived from the sale of commercial licenses. The report is due October 1, 2000. This provision became effective June 24, 1999.
- Exempts from the Recreational Commercial Gear License requirements the taking of fish by gig for recreational purposes.

Cruelty to animals. The act amends the cruelty to animals statute to exempt activities conducted for the primary purpose of providing food for human and animal consumption and so that it applies only to:

- Amphibians (frogs, toads, and salamanders).
- Reptiles (snakes, lizards, and turtles).
- Birds.
- Mammals, except for human beings.

This provision became effective June 24, 1999.

Effective date. Unless otherwise specified, all of the provisions in the act became effective July 1, 1999. (JH)

Hazardous Sites

Conform Definition of a Hazardous Site

S.L. 1999-83 (HB 1125) amends the State's definition of an inactive hazardous site to make it conform with the analogous definition in federal law. "Inactive hazardous substance or waste disposal site" was previously defined as "any facility, structure, or area where disposal of any hazardous substance or waste has occurred." This act makes this definition the same as the definition for "facility" in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980. As a result, the term inactive hazardous substance or waste disposal site is now defined as "(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel."

The act became effective May 21, 1999. (HH)

Land-Use Restrictions/Contaminated Sites

S.L. 1999-198 (SB 1159) broadens the authority of the Department of Environment and Natural Resources (DENR) to allow the imposition of land-use restrictions on contaminated property to protect public health or the environment. This authority will now apply to all DENR programs for the remediation of contaminated sites. These land-use restrictions must be filed in the appropriate register of deeds office and referenced in any instrument of transfer if the property is leased or changes ownership. In addition, the act codifies current DENR policy by specifying that land-use restrictions must be included in any remedial action plan that will result in a "less-than-pristine" cleanup.

The act became effective October 1, 1999. (HH)

Southeast Compact Commission

S.L. 1999-357 (SB 247) withdraws North Carolina from the Southeast Interstate Low-Level Radioactive Waste Management Compact (Compact) by repealing Chapter 107F of the General Statutes. Effective July 1, 2000, the act also abolishes the North Carolina Low-Level Radioactive Waste Management Authority, the agency responsible for developing a disposal facility for the Compact. Until July 1, 2000, the functions of the Authority are restricted to actions related to closing and restoring the proposed disposal site in Wake County. In addition, the act directs the North Carolina Radiation Protection Commission to study options for the management of low-level radioactive waste produced by North Carolina generators and to develop a recommended plan for complying with the State's responsibilities under the federal Low-Level Radioactive Waste Protection Act of 1980. The Commission must report its findings and recommendations to the General Assembly by May 15, 2000. The act provides that the Department of Environment and Natural Resources may not issue or consider any application for a low-level radioactive waste facility until the General Assembly establishes a plan for the future management of low-level radioactive waste.

Except as otherwise noted, the act became effective July 26, 1999. (HH)

Parks & Public Spaces

New River State Park/Acreage Limitation

S.L. 1999-147 (SB 872) removes a provision in the General Statutes that limits the amount of land or interest in land that the Department of Environment and Natural Resources (DENR) may acquire to protect and provide public access to the section of the New River designated as a Natural and Scenic River. Previously, DENR could not acquire more than 2,200 acres for this purpose.

The act became effective June 4, 1999. (RZ)

Special Reserve Funds for Forest Seedling Program/Bladen Lakes State Forest

S.L. 1999-237, Sec. 15 (HB 168, Sec. 15) creates the Forest Seedling Nursery Program Fund and the Bladen Lakes State Forest Fund within the Division of Forest Resources in the Department of Environment and Natural Resources (DENR).

Forest Seedling Nursery Program Fund. The Forest Seedling Nursery Program Fund (Fund) is a special non-reverting revenue fund that DENR may use to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program. The Fund shall consist of the receipts from the sale of seed and seedlings from forest tree nurseries and forest

tree seed orchards established and operated by DENR, except for the percentage of the receipts from the sale of seedlings that the Secretary of Environment and Natural Resources elects to place in the Tree Cone and Seed Purchase Fund. The Fund shall also consist of any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to the Fund.

Bladen Lakes State Forest Fund. The Bladen Lakes State Forest Fund is a special non-reverting revenue fund that DENR may use to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to the Fund.

This section became effective July 1, 1999. (RZ)

State Nature and Historic Preserve

S.R. 1999-18 (SJR 1139) is a joint resolution that (the resolution) accepts over 24,000 acres of State parklands and historic sites into the State Nature and Historic Preserve, and S.L. 1999-268 (SB 1127) is the act that (the act) codifies in the General Statutes the addition of these properties. The act also removes certain tracts of land from the State Nature and Historic Preserve and the State Park System and amends the Constitution to allow properties to be accepted into the Preserve by enactment of a bill rather than adoption of a resolution.

State Nature and Historic Preserve. Article XIV, Section 5 of the North Carolina Constitution established the State Nature and Historic Preserve (Preserve). The Preserve is intended to ensure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. The Council of State may petition the General Assembly to adopt a resolution accepting State properties for inclusion in the Preserve. In order to accept any properties into the Preserve, the General Assembly must adopt a joint resolution by a vote of three-fifths of the members of each house. A resolution accepting properties into the Preserve must also be codified in the General Statutes. A certified copy of every resolution accepting properties into the Preserve must be transmitted by the Secretary of State to the register of deeds in each county where any of the properties accepted are located for filing and indexing in the grantor index. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house. Properties were last accepted into the Preserve in 1989.

Properties Accepted and Removed from State Nature and Historic Preserve. The resolution contains the descriptions of the properties to be accepted into the Preserve. The resolution also re-accepts those properties that have been previously accepted into the Preserve, but have changed names without a change in their boundaries. In addition, the resolution directs the Secretary of State to forward a certified copy of the resolution to the register of deeds of the counties in which the accepted properties are located.

The act codifies in the General Statutes the description of the properties accepted into the Preserve by the resolution. In addition, the act removes certain properties from the Preserve and provides that other properties are deleted from the Parks System.

Constitutional Amendment. The act contains a constitutional amendment to allow properties to be accepted into the Preserve by enactment of a bill rather than adoption of a resolution. The amendment will be submitted to the voters of the State in the next election in which another constitutional amendment is submitted to the voters. The act also contains conforming amendments to the State Nature and Historic Preserve Dedication Act that are contingent upon passage of the constitutional amendment. The amendment and the conforming changes will become effective upon certification to the Secretary of State that the voters of the State have approved the amendment.

The resolution became effective June 30, 1999. Except as otherwise noted, the act became effective July 9, 1999. (RZ)

Strengthen Littering Law

S.L. 1999-454 (HB 222). See **Criminal Law.**

Damaged Piers in State Parks/Boat Stalls/White Lake

S.L. 1999-459 (HB 978) directs the Department of Environment and Natural Resources to authorize the owner of a private pier at White Lake State Lake that was damaged in a natural disaster between January 1, 1996 and July 1, 1999 to rebuild the pier to its previous condition and, under certain conditions, to construct additional boat stalls. The act also reassigns the management of lands containing the Falls Lake State Trail from the State Park system to the Wildlife Resources Commission.

The act became effective August 13, 1999. (HH)

Water Quality

Sedimentation Act/Excavation

S.L. 1999-82 (HB 1008) allows certain excavation and grading activities to be regulated under the Sedimentation Pollution Control Act of 1973 (Sedimentation Act) instead of the Mining Act of 1971 (Mining Act). This act amends the Mining Act to explicitly exclude from the definition of "mining", and thus exclude from regulation under the Mining Act, certain excavation and grading activities conducted to provide soil or other unconsolidated material for an off-site construction project. A condition for exempting these activities from regulation under the Mining Act is that they be regulated under the Sedimentation Act. This exemption is patterned after an existing exemption for excavation and grading activities conducted in aid of on-site farming or on-site construction for purposes other than mining.

The act became effective October 1, 1999. (RZ)

Nonprofit Water Corp. Loans

S.L. 1999-213 (SB 878). See **Taxation**.

Clean Water Act of 1999

S.L. 1999-329 (HB 1160), as amended by S.L. 1999-456, Sec. 68 (HB 162, Sec. 68), contains measures that affect swine farms, sewage and industrial waste treatment systems, the enforcement of water quality laws, wetlands and conservation easement programs, river basin rules, and Clean Water Bond monies.

Swine Farms. In relation to swine farms, the act:

- Extends the Statewide moratorium and the Moore County moratorium on construction or expansion of swine farms and animal waste treatment systems until July 1, 2001.
- Extends until July 1, 2001 the pilot program under which the Division of Soil and Water Conservation inspects animal waste management systems in Jones and Columbus County. The act also adds Brunswick County to the pilot program.
- Directs the Department of Environment and Natural Resources (DENR) to develop an inventory and risk ranking of inactive animal waste lagoons.
- Directs the Environmental Management Commission (EMC) to report to the Environmental Review Commission (ERC) on its implementation of Governor Hunt's Lagoon Conversion Plan.

- Requires, effective October 1, 1999, that the operator of an animal waste management system issue a press release for any release of 1,000 gallons or more of animal waste that reaches surface waters. The act also requires the operator to publish a notice for any release of 15,000 gallons or more of animal waste that reaches surface waters. This notice must be published in a newspaper of general circulation in the county where the release occurs and in newspapers of general circulation in all downstream counties significantly affected by the release.

Sewage and Industrial Waste Treatment Systems. In relation to sewage and industrial waste treatment systems, the act:

- Requires sewage treatment systems to give their customers annual reports on their performance and compliance with water quality laws, beginning with the systems' performance in 1999.
- Requires, effective October 1, 1999, that a sewage treatment or industrial waste treatment system operator issue a press release for any release of untreated wastewater of 1,000 gallons or more that reaches surface waters. The act also requires the operator to publish a notice for any release of untreated wastewater of 15,000 gallons or more that reaches surface waters. This notice must be published in a newspaper of general circulation in the county where the release occurs and in newspapers of general circulation in all downstream counties significantly affected by the release.
- Directs the EMC to implement a program to permit collection systems on a system-wide basis. Effective October 1, 1999, the EMC may issue a permit to construct or expand a treatment works only if the applicant first analyzes alternatives to the proposed facility and complies with the new collection system permit program.
- Directs the EMC to develop engineering standards to facilitate the regional interconnection of wastewater systems.
- Directs DENR to study issues related to requiring a privately owned wastewater system to connect to a publicly owned system if the connection would protect public health or the environment.
- Directs DENR to implement a pilot program for more intensive inspections of wastewater treatment works and report on the program's effectiveness in increasing compliance with water quality laws.
- Directs DENR to analyze causes of discharges of untreated and partially treated sewage and make recommendations for reducing these discharges.
- Directs the Commission for Health Services to study septic tank maintenance issues.

Enforcement of Water Quality Laws. The act increases the maximum civil penalty for a water quality violation from $10,000 to $25,000, except for a violation of a reporting requirement or in a case where a penalty has not been imposed on the violator within a two-to-five year "look-back" period. The look-back period will start at two years on October 1, 1999 and increase in three one-year steps to five years on October 1, 2002.

Wetlands and Conservation Easements. The act authorizes DENR to convey funds and property acquired under the Wetlands Restoration Program to other government agencies and nonprofit organizations for wetland preservation, restoration, and creation. The act directs DENR to maintain an inventory of all properties and easements held or managed under the Wetlands Restoration Program and to include this inventory in annual reports on the Wetlands Program to the ERC. In addition, the act directs DENR to report to the ERC on the progress of the State Wetlands Stream Advisory Committee and to recommend measures to improve and simplify the State's wetlands protection program.

The act also authorizes DENR to acquire and transfer easements under the Conservation Reserve Enhancement Program.

River Basins. The act authorizes the EMC to adopt temporary rules to implement basin-wide water quality management plans for the Cape Fear, Catawba, and Tar-Pamlico River Basins after consulting with interested parties, publishing notices of proposed temporary rulemaking,

and holding public hearings in the affected basins. This provision will remain effective until December 31, 2000.

Clean Water Bonds. The act amends the Clean Water and Natural Gas Critical Needs Bond Act of 1998 by:

- Authorizing DENR to limit to 2 million dollars or 2/3 of the eligible project cost, whichever is less, the maximum principal amount of a grant awarded to a local government unit with a bond rating high enough to obtain outside loans.
- Allowing a loan applicant to hold a public hearing at any time prior to the disbursement of loan funds, rather than requiring the applicant hold the hearing prior to applying for the loan.

This provision applies to grants and revolving loans made on or after July 21, 1999.

Except as otherwise noted, the act became effective July 21, 1999. (HH)

Strengthen Sedimentation Act

S.L. 1999-379 (HB 1098) makes several amendments to the Sedimentation Pollution Control Act of 1973 (Sedimentation Act).

Civil penalties. The act raises the maximum civil penalty for any violation of the Sedimentation Act to $5,000. Previously, the maximum civil penalty for a violation of the Sedimentation Act other than a violation of a stop-work order was $500, while the maximum civil penalty for a violation of a stop-work order was $5,000. The act also clarifies that a person may be assessed a civil penalty from the date of the original violation and may be assessed additional civil penalties for continuing violations.

Fees. The act removes a provision that limited the total amount of fees that DENR could collect in a fiscal year for the review and approval of erosion control plans. Under prior law, the total amount of fees collected for the review and approval of erosion control plans in a fiscal year could not exceed one-third of the total administrative and personnel costs incurred by DENR in reviewing the plans and for related compliance activities in the prior fiscal year.

Erosion control plans. The act provides that the approval of an erosion control plan is conditioned on the applicant's compliance with federal and State water quality laws, regulations, and rules. The act also requires that a copy of any erosion control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the Director of the Division of Water Quality.

Contractor examinations. The act directs the State Licensing Board for General Contractors to include questions on the Sedimentation Act and the rules adopted under the act on the general contractors examination.

The act became effective October 1, 1999, and applies to land-disturbing activity that occurs on or after that date. (RZ)

Neuse River Buffer Amendments

S.L. 1999-448 (SB 1049) amends and codifies elements of S.L. 1998-221 (Neuse River Basin Rule/Other Environmental Amendments) that provide for compensatory mitigation as an alternative to maintaining riparian buffers and authorize the Environmental Management Commission (EMC) to delegate responsibility for the implementation of riparian buffer protection requirements to local governments. The 1998 legislation gave the EMC specific instructions on implementing and revising the Neuse River Basin Rule, which protects water quality in the Neuse River Basin by protecting riparian buffers. A riparian buffer is a strip of vegetation along a river or stream.

Compensatory mitigation. The act codifies a directive to the EMC to establish a program to allow a person who can demonstrate no practical alternative to destroying a

protected riparian buffer to perform compensatory mitigation in lieu of preserving the buffer. These alternatives must include:

- Payment of a compensatory mitigation fee.
- Donation of real property or an interest in real property to a State agency, a unit of local government, or a private nonprofit for the maintenance or restoration of a buffer.
- The establishment, restoration, or enhancement of a buffer that is not otherwise required to be protected.
- The construction of an alternative mechanism to reduce nutrient loading.

All compensatory mitigation activities must provide water quality protection that is equal to or greater than the protection provided by the lost buffer and must be conducted in the same river basin as the lost buffer. The act further provides that compensatory mitigation is available for the loss of a riparian buffer along an intermittent stream, perennial stream, or perennial waterbody. The 1998 legislation allowed compensatory mitigation only for the loss of a riparian buffer along an intermittent stream.

The compensatory mitigation fee schedule established by the EMC must be based on the cost to provide equivalent or greater water quality protection as that provided by the lost buffer by one of the following measures:

- Restoring existing riparian buffers.
- Acquiring riparian land and creating new riparian buffers.
- Monitoring and maintaining the restored or created buffers.
- Constructing an alternative mechanism to reduce nutrient loading.

Delegation to local governments. The act specifies the procedure by which the EMC may delegate the responsibility for implementing riparian buffer protection requirements to a local government. The EMC must rescind the delegation if it determines that a local government is failing to implement or enforce the requirements. DENR is to provide training and technical assistance to local governments on the implementation of the buffer protection requirements.

Rulemaking authority. The act authorizes the EMC to adopt rules to implement the act.

The act became effective August 10, 1999. (HH)

Major Pending Legislation

Environmental Excellence Agreements

SB 1133 and HB 1201 were introduced as blank bills with the understanding that the interested parties would develop a consensus committee substitute bill on Environmental Excellence Agreements for consideration by the General Assembly. Environmental Excellence legislation would give the Secretary of Environment and Natural Resources the authority to enter into Environmental Excellence Agreements with interested parties as an alternative to requiring compliance with statutory and regulatory permit requirements. Under an Environmental Excellence Agreement, the Secretary would agree to replace the permit requirements with an individually tailored agreement designed to give a party the flexibility to try alternative approaches to achieve minimum compliance with environmental standards at a lower cost, achieve greater than minimum compliance, or both. Although the Environmental Excellence working group met weekly during most of the 1999 session and made considerable progress, a number of unresolved issues remain. The working group will meet during the interim with the expectation that a consensus bill will be ready for consideration by the 2000 Session. (GG)

Dry-Cleaning Solvent Amendments

HB 1326 would earmark a percentage of the State sales and use taxes collected on dry-cleaning services and allocate those funds to the Dry-Cleaning Solvent Fund. The earmarking would sunset July 1, 2010. The bill would not affect the tax on dry-cleaning solvent and the revenue from the dry-cleaning solvent tax will continue to be credited to the Fund. The bill would also amend the Dry-Cleaning Solvent Cleanup Act of 1997 (Dry Cleaning Act) by repealing the requirement of financial responsibility for dry-cleaning facilities. The bill also raises the amount of the deductibles that an owner of a dry-cleaning facility must meet before accessing the Fund to pay for cleanup costs. In addition, the bill establishes State goals for reducing the use of dry-cleaning solvents. The bill has passed the House and is currently in the Senate Finance Committee. (RZ)

Coastal Recreational Fishing License

HB 1434 would establish a program for the licensing of coastal recreational fishing and would make it unlawful for any person to engage in recreational fishing in coastal fishing waters by means of recreational gear without holding a Coastal Recreational Fishing License (CRFL). The bill would also establish the Sealife Enhancement Fund in the Department of Environment and Natural Resources to hold proceeds from the sale of CRFLs. The bill passed the House and is currently in the Senate Agriculture, Environment, and Natural Resources Committee. (JH)

Studies

Legislative Research Commission

Legislative Research Commission

S.L. 1999-395, Sec. 2.1 (HB 163, Sec. 2.1) authorizes the Legislative Research Commission to study the following environmental and agricultural issues:

- The acquisition of additional parklands at Lake James State Park.
- Wastewater system construction permits.
- The impact of red fire ants and the feasibility of increasing fire ant control and eradication efforts.
- The apple industry, including the use and effect of pesticides and the impact of imported apples and apple products.
- Environmental impacts and sources of pollution.
- Coastal beach movement, beach renourishment, and storm mitigation.

This section became effective July 1, 1999. (JH, RZ)

New/Independent Studies/Commissions

NC Water Quality Workgroup Initiative/Rivernet Pilot

S.L. 1999-237, Sec. 15.14 (HB 168, Sec. 15.14) establishes the North Carolina Water Quality Workgroup (Workgroup). The Workgroup will be composed of no more than 15 members jointly appointed by the Chancellor of North Carolina State University and the Secretary of Environment and Natural Resources. The Workgroup will:

- Identify scientific and State agency databases that can be used to formulate public policy regarding the State's water quality, determine if information gaps exist in

those databases, and establish priorities for obtaining the information lacking in those databases.

- Develop the Rivernet water quality monitoring system, which will monitor water quality and nutrient parameters in impaired waters and alert Workgroup members when water quality or nutrient parameters have been exceeded. For the period 1999 through 2001, the Workgroup will implement a Rivernet pilot project.
- Maintain a web-based water quality data distribution site.

The Workgroup must report on its activities, findings, and recommendations by January 30 of each year to the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, the Environmental Review Commission, the Cochairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Chancellor of North Carolina State University.

This section became effective July 1, 1999. (JH)

Study Growth Planning

S.L. 1999-237, Sec. 16.7 (HB 168, Sec. 16.7). See **Local Government**.

Referrals to Existing Commissions/Committees

Joint Legislative Commission on Seafood and Aquaculture

S.L. 1999-395, Sec. 8.1 (HB 163, Sec. 8.1) directs the Joint Legislative Commission on Seafood and Aquaculture to study the desirability and feasibility of requiring seafood entering the State to be labeled as to its state or country of origin. The Commission will report its findings and recommendations, if any, to the 2000 Regular Session of the 1999 General Assembly.

This section became effective July 1, 1999. (JH)

Environmental Review Commission

S.L. 1999-395, Sec. 9.1 (HB 163, Sec. 9.1) directs the Environmental Review Commission (ERC) to study the motor vehicle inspection and maintenance requirements in S.L. 1999-328 (SB 953 - Ambient Air Quality Improvements) as they relate to individual counties. The ERC must report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly.

This section became effective July 1, 1999. (HH)

Referrals to Departments, Agencies, Etc.

Comprehensive Review of Environmental Studies

S.L. 1999-237, Sec. 7.8 (HB 168, Sec. 7.8) requires the Department of Environment and Natural Resources (DENR) to produce a report that lists all environmental studies authorized by the General Assembly between July 1, 1979 and April 1, 2000. The report shall:

- Identify the party responsible for carrying out each study.
- Summarize the costs and funding sources for each study.
- Summarize the findings and recommendations of each study and explain actions taken by DENR in response to these findings and recommendations.
- Report on the status, preliminary conclusions, and estimated time of completion of all studies that are still in progress.

The Secretary of Environment and Natural Resources must provide this report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources, the Environmental Review Commission, and the Fiscal Research Division by April 15, 2000.

This section became effective July 1, 1999. (HH)

NER Interim Study of DENR Organization

S.L. 1999-237, Sec. 15.5 (HB 168, Sec. 15.5) directs the House and Senate Appropriations Subcommittees on Natural and Economic Resources to study the organization of the Department of Environment and Natural Resources to determine its effectiveness and efficiency. The subcommittees must report their findings and recommendations, including any legislative proposals, to the 2000 Regular Session of the 1999 General Assembly by May 1, 2000.

This section became effective July 1, 2000. (HH)

DENR Study One-Stop Permit Process

S.L. 1999-237, Sec. 15.10 (HB 168, Sec. 15.10) directs the Department of Environment and Natural Resources (DENR) to study the feasibility and benefits of implementing a one-stop permit system to improve coordination within DENR with respect to processing environmental permit applications, communication with the regulated community, and regulatory compliance. No later than February 15, 2000, DENR must report to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division on their findings and recommendations.

This section became effective July 1, 1999. (RZ, JH)

Beach and Mountain Restoration Plan

S.L. 1999-237, Sec. 15.18 (HB 168, Sec. 15.18) directs the Department of Environment and Natural Resources (DENR) to evaluate the condition of North Carolina's beaches and mountains and to develop recommendations to address issues of environmental protection, conservation, preservation, and restoration. DENR must report its evaluation and recommendations to the Environmental Review Commission and the Joint Legislative Commission on Governmental Operations by April 15, 2000.

This section became effective July 1, 1999. (JH)

Department of Environment and Natural Resources

S.L. 1999-395, Part XVII (HB 163, Part XVII) directs the Department of Environment and Natural Resources (DENR) to study:

- Compliance with forest practice guidelines related to water quality.
- Current procedures for the issuance of permits for open burning in or near woodlands under the protection of the Department and whether more controls are needed to protect the public and the environment.

DENR must report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than March 1, 2000.

This section became effective July 1, 1999. (JH, RZ)

Chapter 10
Health and Human Services

Linda Attarian (LA), Jo McCants (JM), Mary Shuping (MS),
Gann Watson (GW), John Young (JY), Rick Zechini (RZ)

Enacted Legislation
Health

Approve Tobacco Settlement Nonprofit Corporation

S.L. 1999-02 (SB 06). See **Agriculture**.

Children's Health Insurance Program Clinics/Repeal Prohibition

S.L. 1999-04 (SB 26) amends Section 8 of S.L. 1998-1, Extra Session, which restricted reimbursements under the State Children's Health Insurance Program (CHIP) for health care services provided at school-based health clinics. Reimbursements were limited to immunizations. The act repealed this restriction to allow all covered services provided to CHIP enrollees at school-based health clinics to be reimbursed with CHIP funds.

The act became effective March 18, 1999. (LA)

Royall Children's Vision Program

S.L. 1999-22 (SB 289) designates the North Carolina Children's Vision Screening Improvement Program within the Department of Health and Human Services as the Kenneth C. Royall, Jr. Children's Vision Screening Improvement Program.

The act became effective April 8, 1999. (JY)

Cancer Control Reporting

S.L. 1999-33 (SB 273) makes changes to the Central Cancer Registry (Registry) within the Department of Health and Human Services. The Registry was created to compile, tabulate and preserve data that relates to the incidence, treatment and cure of cancer. The act charges the Registry as follows:

- Repeals permissive language for medical facilities to report cancer data so that health care providers and facilities that detect, diagnosis, or treat cancer must now report within six months each diagnosis of cancer.
- Allows the Registry to conduct a site visit or be provided access to the information if the provider or facility does not report as required.
- Requires a facility or a provider reimburse the Registry up to $100 of the Registry's cost of obtaining access to the information.
- Allows the Registry to grant, for good cause, to a facility or provider an additional 30 days for reporting.

The act became effective May 7, 1999. (JY)

Pharmacist Peer Review

S.L. 1999-81 (HB 906) authorizes the North Carolina Board of Pharmacy (Board) to establish peer review organizations for the purpose of establishing a mechanism to rehabilitate impaired pharmacists. The act:

- Allows the peer review organizations to receive relevant information from the Board and other sources, conduct investigations, evaluate the performance of the pharmacists investigated, and make reports concerning the practices and practice patterns of licensed pharmacists that may be impaired.
- Authorizes the Board to adopt rules under which the peer review organizations may act.
- Provides funds for the peer review organization's operations.
- Requires peer review organizations to report to the Board immediately if:
  - The organization determines that the pharmacists is an imminent danger to the public or himself;
  - Refuses to cooperate with the investigation or submit to treatments; and
  - Gives other grounds for disciplinary action.
- Requires that confidential information that comes to the organization remains confidential and is not subject to discovery or subpoena in a civil case.
- Provides that good faith efforts of the peer review organizations are not grounds for civil action.

The act became effective May 21, 1999. (JY)

Immunization Law Changes

S.L. 1999-110 (SB 614) makes technical, clarifying and other changes to the immunization statutes. The substantive changes include:

- Requiring local health departments to administer the required and state-supplied immunizations at no charge.
- Permitting the Department of Health and Human Services to require additional information in monthly immunization reports filed by local health departments.
- Specifying the information that must be included in a certificate or record of immunization administered in another state when a person presents such a certificate to a childcare facility, school, or college or university in North Carolina.
- Clarifying that immunization requirements apply to children attending K-12 grades of public and private schools and private preschools.
- Repealing the immunization exemption for persons enrolled in a college or university on or before July 1, 1986, unless after July 1, 1986, the person transfers, interrupts study for a period of six months or more or graduates.

The act became effective May 28, 1999. (JY)

Utilization Review/ASAM Criteria

S.L. 1999-116 (HB 715). See **Insurance**.

Amend Professional Corporations Act

S.L. 1999-136 (SB 620) removes the restriction that a physician practicing psychiatry must be part of the group forming a professional corporation along with certain nursing specialists, social workers, and counselors. In its place, the act requires that any physician (not a physician practicing psychiatry) must be part of the group forming the professional corporation along with certain nursing specialists, social workers, or counselors.

The act became effective May 24, 1999. (JY)

Health Care Personnel Registry Change

S.L. 1999-159 (HB 1258) amends G.S. 131E-256 which provides for the establishment and maintenance of the Health Care Personnel Registry (Registry) within the Department of Health and Human Services. The Registry contains the names of unlicensed health care personnel who provide direct hands-on care and who are either under State investigation or have substantiated findings of patient abuse or neglect, misappropriation of patient or facility property, fraud against a patient or facility, or diversion of patient or facility drugs. The act makes the following changes:

- Clarifies the types of residential mental health, developmental disabilities, and substance abuse facilities covered by the statute.
- Requires all health care providers, as defined in the statute, to access the Registry prior to hiring health care personnel and to keep a business record of each such contact.
- Clarifies that the Department of Health and Human Services is to be notified only of allegations that health care facilities have substantiated with supporting evidence through the completion of an internal investigation.

The act became effective July 1, 1999. (LA).

Substance Abuse Certification

S.L. 1999-164 (SB 1062), as amended by S.L. 1999-456, Sec. 24 (HB 162, Sec. 24) amends the North Carolina Substance Abuse Certification Act to:

- Authorize the North Carolina Substance Abuse Professionals Certification Board (Board) to designate a person to practice as a clinical supervisor intern.
- Clarify the definition of substance abuse counselor intern to include persons who have successfully completed 300 hours of Board-approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.
- Amend the term of service on the Board when a vacancy arises.
- Procedurally clarify the process whereby applicants for certification are subject to discipline.
- Clarify the requirements for certification as a Certified Substance Abuse Counselor, Certified Substance Abuse Prevention Consultant, Certified Clinical Supervisor, Certified Clinical Addictions Specialist, and Certified Residential Facility Director.
- Establish the requirements for Board designation of an applicant as a Clinical Supervisor Intern.
- Establish the requirements for persons who are authorized to supervise applicants for certified clinical supervisor, certified substance abuse counselor, and certified clinical addictions specialist.

The act became effective on October 1, 1999. (LA)

Managed Care/Specialist Referral

S.L. 1999-168 (SB 344). See **Insurance**.

Pastoral Counseling Reimbursement/Sunset Off

S.L. 1999-186 (SB 293). See **Insurance.**

Insurance Coverage/Bone Mass Measurement

S.L. 1999-197 (HB 314). See **Insurance**.

Substance Abuse/Direct Pay

S.L. 1999-199 (HB 714). See **Insurance**.

Transportation Costs/Involuntary Commitment

S.L. 1999-201 (HB 972), as amended by S.L. 1999-456, Sec. 36 (HB 162, Sec. 36) amends G.S. 122C-251(h), which authorizes public entities to recover the cost incurred by transporting respondents (persons involuntarily committed to 24-hour psychiatric facilities) to and from 24-hour facilities. The public entity may recover the costs from the respondent, if he or she can pay, or, if indigent, from the respondent's county of residence. The act amends this subsection by adding the requirement that the respondent's county of residence must reimburse the public entity that incurred the transportation cost. The act also authorizes the respondent's county of residence, after giving reasonable notice, to recover the costs from the respondent, from a person or entity legally liable for the respondent's support and maintenance, or from any person or entity legally or contractually liable for the costs.

The act became effective June 21, 1999. (LA)

Area Mental Health/County Appropriations

S.L. 1999-202 (SB 1122) amends G.S. 122C-115(d), which prohibits counties from making reductions in appropriations to fund area mental health, developmental disabilities, and substance abuse services in response to the availability of State funding for such services. The subsection is amended to allow counties to reduce appropriations by an amount previously appropriated by the county for one-time, non-recurring special needs of the area authority.

The act became effective July 1, 1999. (LA)

Veterinarian Reciprocity

S.L. 1999-203 (HB 414) adds a new subsection (a1) to G.S. 90-187.3, which authorizes the North Carolina Veterinary Medical Board (Board) to issue licenses to applicants licensed in other states. The new subsection addresses situations where an applicant is licensed in a state that did not require the applicant to complete the certification program developed by the American Veterinary Medical Association for foreign veterinary graduates. Under prior law, the Board was not authorized to issue a license under these circumstances because the other state's licensure requirements were not substantially equivalent to those required in North Carolina. The act authorizes, but does not require, the Board to issue a license under these circumstances. This provision became effective June 21, 1999, but will expire July 1, 2001.

The act also adds a new subdivision (4a) to G.S. 90-187.3(a) which sets forth the criteria an applicant licensed in another state must meet before the Board is authorized to issue a license without an first requiring an additional written examination. The act provides that any disciplinary actions taken against the applicant, or his or her license, by the other state in which the applicant is licensed will not affect the applicant's competency to practice veterinary medicine under the North Carolina Veterinary Practice Act, or rules adopted by the Board. This provision became effective June 10, 1999. (LA)

Health Insurance/Physician Assistants

S.L. 1999-210 (SB 685). See **Insurance**.

State Hospitals/Peer Review

S.L. 1999-222 (HB 190) allows for the release of information gathered in connection with the peer review of facilities subject to the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985. The release may be made to a professional standards review organization that contracts with a State or federal agency to perform any accreditation or certification function. The information must be reasonably required by the organization to grant or continue accreditation or certification. Information released retains its status as privileged or confidential information that is exempt from public disclosure and from discovery or use in civil actions.

The act also amends the Hospital Licensure Act to provide that confidential information produced and considered by a medical review committee may be released to a professional standards organization that performs accreditation or certification functions. The information shall be limited to that which is related to the organization's determination to grant or continue accreditation or certification. The information retains its confidentiality and is not subject to discovery in a civil action.

The act became effective June 25, 1999. (JY)

Health Care Professionals

S.L. 1999-226 (HB 1193) amends The Medical Practice Act to provide that whenever a statute or State agency rule requires that a physical examination be conducted by a physician, the examination may be conducted by a physician assistant or nurse practitioner. A physician does not need to be present as the examination is conducted or sign the examination form. The act does not apply to certain physical examinations required under a court order, an order of the Board of Medical Examiners, or under rules adopted by the North Carolina Boxing Commission.

The act became effective October 1, 1999. (LA)

Insurance/Cover Contraceptives

S.L. 1999-231 (SB 90) as amended by S.L. 1999-456, Sec. 15 (HB 162, Sec. 15). See **Insurance.**

Department of Health and Human Services Employees/In-Kind Match

S.L. 1999-237, Sec. 11.3 (HB 168, Sec. 11.3) amends G.S. 143B-139.4, which authorizes the Department of Health and Human Services (DHHS) to allow employees to provide services to assist private, nonprofit foundations. Under prior law, the assistance was restricted to private, nonprofit foundations that worked directly with and solely in support of services or programs of DHHS. The act broadens the scope of entities authorized to receive such assistance. The act also authorizes the Secretary of DHHS to assign employees of the Office of Rural Health and Resource Development to serve as in-kind match to nonprofit organizations working to establish health care programs that will improve health care access while controlling costs.

The act became effective July 1, 1999. (LA)

Authorization to Expand Transitional Medicaid

S.L. 1999-237, Sec. 11.8 (HB 168, Sec. 11.8) directs the Department of Health and Human Services to apply for federal approval or waiver to expand from 12 to 24 months transitional Medicaid benefits for Work First families, including parents. The expansion must be structured to maximize the federal fund share.

This section becomes effective no earlier than October 1, 1999. (LA)

Additional Dental Benefits Under Health Insurance Program for Children

S.L. 1999-237, Sec. 11.9 (HB 168, Sec. 11.9) amends G.S. 108A-70.21(b)(1), which sets forth the scope of dental services covered under the Health Insurance Program for Children. The act provides for the following additional dental benefits: an additional topical fluoride application per year, sealants, simple extractions, therapeutic pulpotomies, and prefabricated stainless steel crowns.

This section became effective July 1, 1999. (LA)

Study of State Psychiatric Hospitals/Area Mental Health Programs

S.L. 1999-237, Sec. 11.36 (HB 168, Sec. 11.36). See **Human Services.**

Health Mothers/Healthy Children Grant Program

S.L. 1999-237, Sec. 11.63 (HB 168, Sec. 11.63) allows the Department of Health and Human Services (DHHS) to initiate a Healthy Mothers/Healthy Children Grant Program in up to eight local health departments. DHHS may consolidate a number of federal and State funds appropriated for the Maternal Health, Women's Preventive Health, Child Health, and Child Service Coordination and Immunization programs. DHHS shall not include federal categorical funds, competitive special project funds, and funds for regionalized services in the grant funds awarded to local health departments. DHHS shall require participating local health departments to identify and report expenditures by program in order to monitor and track the funds to meet federal and State reporting requirements. In addition, DHHS shall require local health departments to report on the administrative, programmatic, and health outcome benefits that are realized by providing localities greater flexibility.

DHHS shall report to members of the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources.

This section became effective July 1, 1999. (JY)

Preventive Health Program Plan

S.L. 1999-237, Sec. 11.64 (HB 168, Sec. 11.64) requires the Department of Health and Human Services (DHHS) to develop a plan to reduce duplication among preventive health programs and initiatives. DHHS shall focus on task forces, advisory committees, local health departments, and other entities supported by and within the Chronic Disease Prevention and Control Section of the Division of Public Health. DHHS shall report to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division not later than April 1, 2000.

This section became effective July 1, 1999. (JY)

Access to Preventive Dental Care/Health Departments

S.L. 1999-237, Sec. 11.65 (HB 168, Sec 11.65) revises the scope of practice and supervision for dental hygienists providing services in health departments. Most dental hygienists may practice only under the supervision of one or more licensed dentists. However, dental hygienists who receive special training, who are employed by or under contract with a local health department or a State government dental public health program, and who work under the direction of a duly licensed dentist employed by that program or the Dental Health Section are deemed to meet the statutory practice and supervision requirements.

This section became effective July 1, 1999. (JY)

Service Corp. and HMO Laws

S.L. 1999-244, (SB 766). See **Insurance**.

Mobile Pharmacies

S.L. 1999-246 (SB 59) amends the Pharmacy Practice Act to permit the operation of certain nonprofit mobile pharmacies. The act provides for the separate registration of mobile pharmacies. It specifies that mobile pharmacies are not required to pay a separate registration fee for each location the pharmacy dispenses prescription drugs. The act only applies to mobile pharmacies operated by nonprofit corporations that dispense prescription drugs at no charge or at a reduced charge to persons whose family income is less than 200% of the federal poverty level and who do not receive reimbursement for the cost of prescription drugs through Medicaid, Medicare, private insurance, or governmental unit.

The act became effective July 2, 1999. (LA)

Electronic Medical Records/Food Regulation

S.L. 1999-247 (HB 957) makes changes in laws pertaining to signatures of physicians providing medical certification of death, the creation and maintenance of medical records, and public health laws concerning the sanitation of food service establishments. The act amends the State Vital Records program.

Death Certificates. Under previous law, all death certificates filed with the County Registrar had to contain a medical certification of the cause of death, signed by a physician. The act allows an electronic or facsimile signature of the physician in lieu of a signature in ink, as long as the State Registrar of Vital Records approves the process.

Medical Records. The act authorizes health care providers or units of State or local government to create and maintain medical records in an electronic format. The electronic records must be in a legible and retrievable form with adequate data back-up. While the health care provider or facility will not be required to maintain a separate paper copy of the file, any consent to treatment or other authorization must be kept in its written form. Orders and other medical record entries may be made by written signature, or by authenticated electronic or digital signature. The same confidentiality requirements that apply to written records will apply to the electronic records.

Sanitation of food and lodging establishments. The act makes the following changes to the definitions of establishments subject to regulation as food and lodging establishments:

- Includes within the definition of "establishment that prepares or serves drink" entities that prepare or serve beverages from raw apples or potentially hazardous beverages made from other fruits and vegetables and eliminates that part of the definition that

limits the definition to "drink in unpackaged portions using containers that are reused on the premises".

- Changes the definition of "establishments that prepares or serves food" to eliminate the requirement that food be in "unpackaged" portions.

The act also amends the law regarding which establishments are exempt from regulation as follows:

- Establishments that prepare or serve food or drink for pay no more frequently than once a month and not to exceed two consecutive days are exempt. This includes vendors at fairs and festivals. The exemption is expanded to include restaurants that operate under a permit.
- Establishments that serve beverages in single service containers that are not reused on the premises are exempt from regulation. This is essentially for convenience-like stores that sell soft drinks and "icy" drinks in paper cups. The act amends the provision to remove beverages made from raw apples or potentially hazardous beverages made from raw fruits or vegetables from the exemption.
- The Department of Agriculture and Consumer Affairs regulates items such as bulk juice in grocery stores, foods in vending machines, and sandwiches. The act adds these items to the list of exemptions.

The act became effective October 1, 1999. (LA)

Nurse Licensure Compact

S.L. 1999-245 (SB 194), as amended by S.L. 1999-456, Sec. 25 (HB 162, Sec. 25), creates the Nurse Licensing Compact (Compact). This interstate compact provides that a license to practice nursing issued by the home state to a resident of that state shall be recognized by each state that is a party to the compact. Key provisions include:

- The establishment of procedures for issuance of licenses by North Carolina.
- The requirement that any nurse whose license has been restricted by the North Carolina Board of Nursing may not practice in another party state until the restriction has been lifted.
- The requirements that the act only apply to nurses whose home states have licensure requirements that are substantially equivalent or more stringent than North Carolina's.

The North Carolina Board of Nursing is directed to report on the Compact to the General Assembly no later than March 1, 2005.

The act became effective July 2, 1999. (JY)

Nurses Aides II Registry Fees

S.L. 1999-254 (SB 843). See **Taxation**.

Group Health Continuation Insurance

S.L. 1999-273 (HB 1025). See **Insurance**.

Cancer Advisory Board/Member Terms

S.L. 1999-280 (SB 998) increases the terms of certain members of the Cancer Control Advisory Committee. In 1993, the General Assembly created the Cancer Coordination and Control Program in the Department of Health and Human Services. The purpose of the program was to maximize the coverage of cancer control programs and minimize the overlap of resources for cancer control. It also created an Advisory Committee on Cancer Coordination and Control

(Committee) to advise the Secretary on issues related to establishing a statewide interagency comprehensive coordinated cancer control program. The act provides that members of the Committee who were initially appointed to two year terms may be appointed to an additional four year term.

The act became effective July 11, 1999. (JY)

Clinical Pharmacist Practitioner

S.L. 1999-290 (HB 1095) authorizes the North Carolina Medical Board and the North Carolina Board of Pharmacy to adopt rules to permit licensed pharmacists to be approved as clinical pharmacist practitioners. Both Boards may adopt rules to allow clinical pharmacist practitioners to enter into patient-specific drug therapy management agreements with a supervising physician to perform certain medical tasks. The medical tasks include the implementation of a predetermined drug therapy specific to the patient's diagnosis, modification of prescribed drug dosages, and ordering laboratory tests.

The rule making authority became effective July 19, 1999. The remaining provisions become effective July 1, 2000. (LA)

Nurse Rehabilitation

S.L. 1999-291 (SB 160) adds a new power to the Board of Nursing that gives the Board explicit authority to establish programs to aid and monitor nurses experiencing chemical addiction or disabilities.

The act became effective July 14, 1999. (JY)

Psychology Practice Definitions

S.L. 1999-292 (SB 793) amends the Psychology Practice Act to include within its scope of practice the diagnosis (including etiology and prognosis) and treatment of neuropsychological aspects of physical illness, accident, injury, or disability. The act also defines the term "neuropsychology".

The act became effective July 14, 1999. (JY)

Health Care Workers/ID Badges

S.L. 1999-320 (SB 951) requires that a physician, nurse, dentist, or pharmacist shall wear a badge or other form of identification displaying the individual's name and the license, certification, or registration held by the practitioner. The badge need not be worn if the patient is being seen in the practitioner's office if the name and license can be determined readily by the patient from a posted license or a sign. The act regulating the practice of nursing is also amended to specify that no one may use the word "nurse" as a title unless the person is currently licensed.

The act became effective October 1, 1999. From October 1, 1999 to October 1, 2001 all health care practitioners are required to wear name badges only. Beginning October 1, 2001, all health care practitioners must wear badges that display all the required information. (JY)

Physical Therapy Fees

S.L. 1999-345 (SB 799). See **Taxation**.

Impaired Dental Hygienists/Fee

S.L. 1999-382 (HB 1470) amends Article 2 of Chapter 90, the Dental Practice Act, to allow the North Carolina State Board of Dental Examiners (Board) to enter into agreements with special impaired dentist peer review organizations to include programs for impaired dental hygienists. These organizations are authorized to appoint to the organizations an additional member who is a dental hygienist to participate in programs and activities as they relate to dental hygienists. Any peer liaisons or volunteers working with impaired dental hygienists must be dental hygienists. Special impaired dentist peer review organizations may include a statewide supervisory committee. When the statewide supervisory committee considers activities and programs that relate to impaired dental hygienists, the act requires that the supervisory committee's membership must include two dental hygienists. The Board is authorized to assess a $40.00 fee upon dental hygienists to assist in the funding of the program.

The act became effective August 8, 1999. (LA)

URO Reviews by NC Physicians

S.L. 1999-391 (SB 345). See **Insurance**.

Prescription Drug Formularies

S.L. 1999-401 (SB 247). See **Insurance.**

Chiropractic Ownership Restricted

S.L. 1999-430 (SB 732) authorizes the North Carolina Board of Chiropractic Examiners (Board) to assess a licensee who has been found guilty in a contested case hearing the reasonable costs of the hearing if the Board finds that the licensee's defense at the hearing was intended to cause delay or was not asserted in good faith. This provision became effective August 5, 1999.

The act also limits the ownership of chiropractic practices to persons licensed as chiropractors. This provision becomes effective January 1, 2000. (JY)

State Board of Chiropractic Examiners Changes

S.L. 1999-431, Sec. 3.8 (SB 437, Sec. 3.8) amends the Chiropractic Practice Act to increase, from seven to eight, the number of members on the State Board of Chiropractic Examiners. The new member is appointed by the Governor and must be a practicing doctor of chiropractic.

This section became effective August 9, 1999. (JY)

Human Services

Increased Use of Services of the Disabled

S.L. 1999-20 (HB 238) amends Chapter 265 of the 1995 Session Laws, an act that encourages the purchase of commodities and services offered by blind and severely disabled persons. Chapter 265 allows State agencies, local governments, and other governmental agencies in certain situations to purchase goods and services directly from nonprofit work centers

for the blind and severely disabled without soliciting bids. This act removes the January 1, 2000 sunset.

The act became effective on April 13, 1999. (JM)

Handicapped Law Changes

S.L. 1999-160 (HB 1071), as amended by S.L. 1999-456, Sec. 44 (HB 162, Sec. 44), amends several statutes in accordance with the Americans with Disabilities Act. The word "handicapped" is removed from relevant statutes and replaced with the term "persons with a disability." The definition of "major life activities" is expanded to include working. Prior to this act, major life activities included: caring for one's self; performing manual tasks; walking; seeing; hearing; speaking; breathing; and learning.

The act provides that State courts do not have subject matter jurisdiction over cases that involve a violation of Chapter 168A (Persons with Disabilities Protection Act), when a federal action has been filed under the Americans with Disabilities Act. In addition, a civil action may be brought under Chapter 168A within two years after the date when the aggrieved person becomes aware of or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct provided the complaint does not allege employment discrimination.

The act became effective October 1, 1999. (JM)

Vocational Rehabilitation Changes

S.L. 1999-161 (HB 255) makes changes to statutes governing programs in the Department of Health and Human Services, Division of Vocational Rehabilitation. The following changes are made to conform to federal law:

- Deletes the reference to "extended evaluation" which is no longer used in the eligibility process under federal law.
- Drops the word "Advisory" from the name of the Vocational Rehabilitation Advisory Council (Council).
- Expands the Council's membership from 15 to 18.
- Allocates to the Council certain responsibilities specified under federal law.

The act became effective June 8, 1999. (JY)

Recodification of Administrative Rules

S.L. 1999-237, Sec. 11 (HB 168, Sec. 11) allows the Codifier of Rules (Codifier) to reorganize Titles 10 and 15A of the North Carolina Administrative Code to reflect the recent reorganization of the Department of Health and Human Services and the Department of Environment and Natural Resources. So long as the changes in text do not change the substance of the rules, the Codifier is exempt from the review and approval of the Rules Review Commission.

This section became effective July 1, 1999. (JY)

Establishment of Division of Education Services/Review of Disability Services

S.L. 1999-237, Sec. 11.4 (a), (b) and (c) (HB 168, Sec. 11.4 (a) (b) and (c)) directs the Secretary of the Department of Health and Human Services (DHHS) to do the following:

- Create a Division of Educational Services to manage the Governor Morehead School and the three residential schools for the deaf. The Division may also include any or

all of the schools and educational programs currently managed by the Division of Mental Health, Developmental Disabilities and Substance Abuse.

- Evaluate opportunities for reorganizing the administration and delivery of DHHS's services to the visually impaired, deaf and hard of hearing, and vocational rehabilitation clients.
- Conduct a comprehensive review of the adequacy and effectiveness if its programs and services for deaf-blind adults and children. DHHS shall report on these three projects to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division no later than April 1, 2000.

This section became effective July 1, 1999. (JY)

Fire Protection Fund

S.L. 1999-237, Sec. 11.17 (HB 168, Sec. 11.17) adds a new subsection (c) to G.S. 122A-5.13, which established a Fire Protection Fund (Fund) in the North Carolina Housing Finance Agency (Agency). The fund provides loans to assist owners of adult care homes, certain group homes, and nursing homes with the purchase and installation of fire protection systems. The act provides that up to $10,000 per year of the proceeds from the fund may be used to provide staff support to the Agency for processing loans and to reimburse the Department of Health and Human Services for review and approval of the fire protection systems.

This section became effective July 1, 1999. (LA)

Child Welfare System Pilots

S.L. 1999-237, Sec. 11.27 (HB 168, Sec. 11.27) requires the Department of Health and Human Services (DHHS), Division of Social Services, to develop a plan to implement a dual response system of child protection in at least two, but no more than five demonstration areas in the State. The pilot programs must implement dual response systems in which local child protective services and law enforcement work together as co-investigators in serious abuse cases, and local departments of social services respond to reports of child abuse or neglect with a family assessment and services approach. DHHS must plan for the development of a data collection process that would enable the General Assembly to assess the impact of the pilots on child safety, timeliness of response, timeliness of services, coordination of local human services, cost-effectiveness, and other related issues.

This section became effective July 1, 1999. (JM)

Child Welfare System Improvements

S.L. 1999-237, Sec. 11.28 (HB 168, Sec. 11.28), requires the Department of Health and Human Services (DHHS) to report semiannually to the members of the Senate Appropriations Committee on Human Resources, the House of Representatives Subcommittee on Health and Human Services, and the Fiscal Research Division on the activities of the State Child Fatality Review Team. DHHS must submit a final report no later than April 1, 2000, and the final report should include recommendations for changes in the statewide child protection system.

This section also allows the Division of Social Services to grant an exception to the minimum 72 hours of preservice training for child welfare workers from an accredited North Carolina social work program who satisfactorily complete or are enrolled in a masters or bachelors degree program after July 1, 1999.

This section became effective July 1, 1999. (JM)

Authority to Access Cash Reserves of Mental Health/Developmental Disabilities and Substance Abuse Services Area Program Foundations for Reimbursement for Disallowed Expenditures

S.L. 1999-237, Sec. 11.41 (HB 168, Sec. 11.41) amends the law regarding the organization and administration of the delivery of public mental health, developmental disabilities, and substance abuse services. The section provides that area authority funds are subject to reimbursement by the area authority to the State when area authority expenditures are disallowed pursuant to a State or federal audit, even if the area authority has previously transferred those funds to another entity or foundation.

This section became effective July 1, 1999. (LA)

Reimbursement and Compensation of Certain Commission Members

S.L. 1999-237, Sec. 11.49 (HB 168, Sec. 11.49) allows members of the North Carolina Vocational Rehabilitation Council, the Statewide Independent Living Council, and the Commission for the Blind who are unemployed or who shall forfeit wages to attend meetings to receive compensation not to exceed $50 per diem as authorized under Federal Law. The standard compensation for members of State boards, commissions, committees and councils is $15 per diem for each day of service.

This section became effective July 1, 1999. (JY)

Intensive Home Visitation Program for Children

S.L. 1999-237, Sec. 11.54(b) (HB 168, Sec. 11.54(b)) directs the Department of Health and Human Services (DHHS) to implement an Intensive Home Visitation Program for Children using federal and matching State funds appropriated from the Work First Reserve Fund. DHHS shall make a progress report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division not later than April 1, 2000. The report is to include preliminary outcome data and other evaluative information.

This section became effective July 1, 1999. (LA)

AIDS Drug Assistance Program

S.L. 1999-237, Sec. 11.55 (a)-(f) (HB 168, Sec. 11.55(a)-(f)) directs the Department of Health and Human Services (DHHS) to provide services to all HIV-positive individuals with incomes at or below 125% of the federal poverty level. These services are to be provided through the AIDS Drug Assistance Program (ADAP), which provides prescription medications at no charge to eligible individuals. If sufficient funds to serve all eligible individuals are not available from funds allocated to ADAP, DHHS is directed to transfer available funds from other programs to meet ADAP's funding needs. The act also directs DHHS to:

- Explore several cost-saving strategies as it develops and implements a cost-containment plan to enable it to serve additional clients under ADAP.
- Implement immediately other cost-containment programs or mechanisms other than the pharmaceutical rebate approach.
- Develop a comprehensive information system on HIV/AIDS clients receiving services from the State.

- Develop a plan for promoting patient compliance with the prescribed treatment regimens.
- Study the estimated participation rates and costs if eligibility for participation in ADAP were raised to 200% or to 250% of the federal poverty level.

DHHS shall report to the members of the Senate Appropriations Committee on Human Resources, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than May 15, 2000.

This section became effective on July 1, 1999. (LA)

HIV/STD Prevention Services/Evaluation and Accountability of Grantees

S.L. 1999-237, Sec. 11.56 (a)-(e) (HB 168, Sec. 11.56 (a)-(e)) directs the Department of Health and Human Services, Division of Public Health (DHHS) to include a quarterly reporting requirement in its contracts with community-based organizations, local health departments, and other entities to provide HIV/STD prevention services to high-risk individuals. The reports must include a description of the entity's program and expenditures to enable DHHS to evaluate the efficiency and effectiveness of the entity's use of funds and program services. These entities must also provide DHHS with annual financial statements and the most recent audit report. Entities that are nonprofit organizations must also provide a copy of the quarterly report to its local health department.

No later than July 1, 1999, DHHS shall adopt standards to evaluate and certify the contracted entities. The standards will apply to contracts entered into as of July 1, 2000 and must include sanctions, including discontinuation of funding, for non-compliance with the standards or with State law. DHHS is prohibited from allocating HIV Prevention Funds to any entity that fails to meet the certification standards once they become effective.

This section became effective July 1, 1999. (LA)

Exemption from Licensure and Certificate of Need

S.L. 1999-237, Sec. 18.8 (HB 168, Sec. 18.8) creates two exemptions for the Department of Corrections:

- Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Department of Corrections are exempt from licensure by the Department of Health and Human Services.
- Any person who contracts to provide inpatient chemical dependency or substance abuse services to inmates of the Department of Corrections is exempt from the certificate of need requirements.

This section became effective July 1, 1999. (JY)

Social Worker Licensure

S.L. 1999-313 (HB 1069) amends the Social Worker Certification Act. The changes include the following:

- The North Carolina Certification Board of Social Work is changed to the North Carolina Social Work and Certification and Licensure Board (Board).
- Reclassifies certified clinical social workers to licensed clinical social workers.
- Authorizes the Board to order the production of records relevant to a complaint, inquiry or investigation conducted by the Board.
- Increases the maximum fee amounts the Board may charge.

- Changes the minimum qualifications to obtain a social work certificate or license by allowing only those applicants who have a bachelor's degree in social work from an accredited college or university to become a Certified Social Worker.
- Revises the reciprocity provisions by adding the requirement that a resident applicant who is certified, registered, or licensed as a social worker in another country, state, or territory must have passed an exam in their respective country, state, or territory that is equivalent to the exam required for the level of certification or licensure in North Carolina.
- Authorizes the Board to issue a temporary license to a nonresident clinical social worker if the jurisdiction's standards were substantially equivalent or higher than North Carolina's standards.
- Allows nonresident social workers that are certified, registered, or licensed in another country, state, or territory to provide professional social work services in North Carolina for up to five days in any calendar year without obtaining a temporary license.
- Automatically suspends a certificate or license if it is not renewed within 60 days after the renewal date.
- Provides for alternative disciplinary actions, including reprimand, censure, probation, required mental or physical exams to determine whether or not an individual is mentally or physically competent to practice social work, required supervision, and circumscribed practice limitations.
- Clarifies which documents and records pertaining to disciplinary proceedings are confidential and which are public.

The act became effective on July 1, 1999. (LA)

Protection from Violent Caregivers

S.L. 1999-318 (HB 1159) amends several provisions in Chapter 7B of the General Statutes (Juvenile Code) to enhance the state's ability to protect children. The act requires the director of the local department of social services to conduct a thorough review of the background of an alleged abuser when a child is removed from the home because of physical abuse. The director's review must include a criminal history check of the alleged abuser. A definition of "criminal history" is added to the Juvenile Code. When a criminal history check reveals that the alleged abuser has a history of violent behavior against people, the director is required to petition the court to order the alleged abuser to have a complete mental health evaluation. If the court finds that the alleged abuser has a history of violent behavior against people, the court must order the alleged abuser to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. The court must consider the opinion of the psychologist or psychiatrist before a child can be returned to the home. The opinion of the psychologist or psychiatrist must also be considered before a child can be returned to a home pending an appeal.

The act also gives the court authority to require the guardian, custodian, stepparent, adult member of the child's household, and any adult relative entrusted with the juvenile's care to participate in the child's treatment when a child has been adjudicated abused, neglected, or dependent. If it is in the best interest of the child, the court may also order these individuals to undergo psychiatric, psychological, or other treatment directed toward remediating or remedying behaviors that led to or contributed to the child being adjudicated abused, neglected, or dependent. Prior to this act, the court only had authority over the parent of a child adjudicated abused, neglected, or dependent.

The act became effective October 1, 1999, and applies to petitions filed on or after that date. (JM)

Welfare Reform Changes

S.L. 1999-359 (SB 1134) amends several statutes relating to the Work First Program. The act makes support services available to families whose family income does not exceed 200% of the federal poverty level. Examples of support services are childcare, housing, and transportation. Counties are encouraged to advise persons eligible for support services to consider enrolling in post-secondary education and training programs to increase their earning potential and enhance career advancement opportunities.

The act amends the Temporary Assistance for Needy Families (TANF) Block Grant allocation for cash assistance. The block grant allocation for Standard Counties is increased while the block grant allocation for Electing Counties is reduced. The reduction in the block grant amount for the Electing Counties made funds available to establish pilot program grants. Counties may apply for grant funds to establish pilot programs designed to address problems of families with significant employment barriers.

The Department of Health and Human Services (DHHS) and the State Plan must allow work activities of up to 20% of Work First recipients to include at least part-time enrollment in a post-secondary education program. In Standard Counties, recipients who maintain at least a 2.5 grade point average will have their 2-year time limit suspended for up to 3 years. The act also requires DHHS to evaluate and monitor the impact of the Work First Program to include the impact on job retention and advancement, academic and behavioral performance, and other measures of economic security and health of children and families.

The act allows two-parent families to receive cash assistance for up to three months after qualifying for assistance without being subject to pay for performance requirements.

The act also addresses maintenance of effort (MOE). Standard counties must maintain funding in Work First, child welfare, and related activities at 100% of county funds budgeted in 1996-97 for AFDC (Aid to Families with Dependent Children), JOBS training, and Emergency Assistance. DHHS must define the services that can be provided with TANF federal funds, as well as State and county MOE funds. Counties that fail to meet MOE and also fail to meet the performance indicators for reducing MOE must submit a corrective action plan to DHHS.

Standard and Electing counties must review Work First cases at least three months prior to the expiration of time limits to:

- Ensure that time limitations on assistance have been computed correctly.
- Ensure that the family is informed of public assistance benefits for which they continue to be entitled.
- Provide for an extension of cash assistance if the family qualifies.
- Assist the family in identifying resources and support that the family needs to maintain employment and family stability.

In addition, Standard and Electing counties must have an emergency assistance program for Work First eligible families. The counties may establish income eligibility for emergency assistance at or below 200% of the federal poverty level.

The Department of Transportation and DHHS are required to work together to develop strategies and methods for assisting Work First recipients in obtaining dependable, ongoing transportation to and from work, child care services, and educational activities. A report on the development and implementation of the strategies must be submitted to the Joint Legislative Public Assistance Committee, members of the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources.

The act became effective August 4, 1999. (GW)(JM)

TANF Separation Noncharged

S.L. 1999-421 (HB 278) provides that an employer's account will not be charged for unemployment benefits paid to a claimant when the claimant was discharged for a bona fide inability to do the work for which the claimant was hired if:

- The claimant was a recipient of Work First Program assistance by an agency of the state.
- The claimant's period of employment was 100 days or less.

The act became effective August 1, 1999, and applies to unemployment insurance claims filed on or after that date. (MS)

Major Pending Legislation

Acupuncturist Reimbursement

HB 768 would require health insurance plans that cover acupuncture services performed by a physician to reimburse the same services when performed by a licensed acupuncturist. The bill would not require health plans to cover such services. The bill is pending in the Senate Health Care Committee. (LA)

Regulation of Pharmacies

SB 960 would grant explicit authority to the Board of Pharmacy to adopt rules regulating pharmacies. The bill is pending in the House Health Committee. (LA)

Regulate Spinal Manipulation

HB 996 would create a new article 8A in Chapter 90 of the General Statutes. The act would provide a statutory definition for "spinal manipulation or spinal adjustment", limit the health care professionals authorized to practice spinal manipulation, and provide that violation of the requirements will be grounds for suspending, revoking or refusing to renew the health care provider's license. The bill is pending in the Senate Health Care Committee. (LA)

Respiratory Care Practice Act

HB 1340 would create a new occupational licensure board for the mandatory licensure of persons engaged in the practice of respiratory care as defined in the act. The bill is pending in the Senate Health Care Committee. (LA)

Pharmacy Choice

HB 1277 would allow a person who has a prescription card benefit to redeem the benefit at any pharmacy in the State willing to redeem the benefit irrespective of whether the pharmacy has entered into a pharmacy provider contract with the insurer or administrator providing the benefit. Currently, a person wishing to redeem a prescription card benefit at a pharmacy that has not entered into a pharmacy provider contract with the insurer or administrator providing the benefit must pay for the entire cost of filling the prescription. The bill would not apply to Medicaid and Medicare prescription drugs and pharmacy services benefits or the Teachers' and State Employees' Comprehensive Major Medical Plan. The bill is currently pending in the House Appropriations Committee. (RZ)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. 2.1(4) (HB 163, Sec. 2.1(4)) authorizes the Legislative Research Commission to study:

- Long-term care facility licensure compliance.
- Biannual inspection and grading of adult care homes by county social services departments, including areas and services to be inspected and graded, penalties for failure to meet minimal grade levels, fiscal impact on county social services departments, posting of grade in adult care home, and related issues.
- Medicaid recovery.
- Central registry for living wills and organ donations.
- Animal vaccination administration.
- Marriage license laws.
- Unvented gas heaters.
- Hunger and nutrition.
- Spaying and neutering of dogs and cats, including funding.
- Causes and prevention of juvenile crime and delinquency.
- Child care subsidy issues.
- Spinal manipulation treatment.
- Defibrillators; use and liability.
- Health professions.

This section became effective July 1, 1999. (JY)

Independent Studies/Commissions

Dentist Participation in Medicaid

S.L. 1999-237, Sec. 11.14 (HB 168, Sec. 11.14) directs the Joint Legislative Health Care Oversight Committee to review and consider the findings and recommendations of the North Carolina Institute of Medicine's Task Force Study on Dental Care Access and other reports and information pertinent to the issue of access to dental care. The Committee is to report its recommendations to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources not later than May 1, 2000.

This section became effective July 1, 1999. (LA)

Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services

S.L. 1999-395, Part V, Sec. 5.1 (HB 163, Secs. 5.1-5.4) authorizes the Implementation Advisory Committee (Committee) of the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) to continue its work updating strategies of the Commission's Developmental Disabilities Plan. The Committee may make a final report to the Commission on or before July 1, 2000 and will terminate unless the Commission extends it.

The Commission shall study the use of physical and mechanical restraints in certain facilities and whether and under what circumstances persons committed involuntarily to State

psychiatric hospitals should be conditionally released. The Commission shall report its findings and recommendations to the 1999 General Assembly, Regular Session 2000, not later than one week prior to its convening.

This section became effective July 1, 1999. (LA)

Referrals to Departments, Agencies, Etc.

Study of Traumatic Brain Injury

S.L. 1999-237, Sec. 11.2 (HB 168, Sec. 11.2) directs the Department of Health and Human Services (DHHS) to study: the long-range costs of treating and caring for persons with traumatic brain injury; and the feasibility and cost to the State of obtaining a Medicaid waiver to provide services to 100 individuals with traumatic brain injury, and the administrative support to manage the waiver. DHHS shall report the results to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources by May 1, 2000.

This section became effective July 1, 1999. (JY)

Study of State Psychiatric Hospital/Area Mental Health Programs

S.L. 1999-237, Sec. 11.36 (HB 168, Sec. 11.36) directs the State Auditor to make interim and final reports on the study of the State psychiatric hospitals and area mental health programs. The study is required under Section 12.35A of S.L. 1998-212. The State Auditor shall report to the Senate Appropriations Committee on Human Resources and the House of Representatives Appropriations Subcommittee on Human Services. The second interim report on the study of area mental health programs is due not later than November 1, 1999, and the final report of that study is due not later than April 1, 2000. The final report on the study of the State psychiatric hospitals is due not later than December 1, 1999.

This section became effective July 1, 1999. (LA)

State Board of Dental Examiners to Develop Procedures for Licensure for Out-of-State Dentists and Dental Hygienists

S.L. 1999-395, Sec. 20.1 (HB 163, Sec. 20.1) directs the State Board of Dental Examiners (Board) to study and develop recommendations for authorizing the Board to issue dentist and dental hygiene licenses by credential (rather than by examination) to resident applicants who are licensed in other states. The Board shall report the results of its study and any proposed legislation to the General Assembly by May 15, 2000.

This section became effective July 1, 1999. (LA)

Chapter 11
Insurance

Linwood Jones (LJ), Ebher Rossi (ER)

Enacted Legislation
Health and Life Insurance

Children/Disabled Dental Anesthesia Coverage

S.L. 1999-134 (HB 1119) requires health insurance plans to cover hospital or ambulatory surgical facility charges and anesthesia charges for certain persons who undergo a needed dental procedure in a hospital or ambulatory surgical facility. The coverage is required if the following two conditions are met:

- The patient is less than 9 years old or has a serious mental or physical condition or behavioral problem.
- The patient's age or condition requires hospitalization or general anesthesia in order to safely and effectively perform the dental procedure.

The coverage is subject to the same deductibles, coinsurance requirements, and other limitations that apply to physical benefits coverage under the plan. This new law requires coverage only for the hospital or ambulatory surgical facility charges (including anesthesia), not the dentist's charges.

The act becomes effective January 1, 2000, and applies to health benefit plans issued or renewed on or after that date. (LJ)

Pastoral Counselors Reimbursement/Sunset Off

S.L. 1999-186 (SB 293), as amended by S.L. 1999-351 (HB 294), requires health insurance plans to continue providing insurance reimbursement for fee-based pastoral counselors for services provided within the scope of their practice and that are otherwise covered by the plan. Fee-based pastoral counselors are ministers who provide pastoral counseling for compensation (other than the ordinary duties performed by a minister as authorized by the minister's church, denomination, or faith group) and who are certified by the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors. In 1995, the legislature enacted a law authorizing direct insurance reimbursement to pastoral counselors until July 1, 1999. This act lifts the July 1, 1999, expiration date so that the fee-based practicing pastoral counselors can continue to receive direct insurance reimbursement.

The act became effective June 18, 1999. (LJ)

Low Bone Mass Measurement Coverage

S.L. 1999-197 (HB 314) requires health insurers to cover certain bone mass measurement procedures for the diagnosis and evaluation of osteoporosis or low bone mass. The bone mass measurement procedure must be a radiological, radioisotopic or other scientifically-proven technology used to identify bone mass or detect bone loss for the purpose of initiating or modifying treatment. The individual undergoing the bone mass measurement must be one of the following types of "qualified individuals:"

- A person who is estrogen-deficient and at clinical risk of osteoporosis or low bone mass.

- A person with radiographic osteopenia in the skeleton.
- A person receiving radiographic long-term glucocorticoid (steroid) therapy.
- A person with primary hyperparathyroidism.
- A person who is being monitored to assess the response to or efficacy of commonly accepted osteoporosis drug therapies.
- A person who has a history of low trauma fractures.
- A person with other conditions or on medical therapies known to cause osteoporosis or low bone mass.

The health insurance plan must pay for one test every two years for these qualified individuals. Medically necessary follow-up tests performed more frequently are also covered.

The act becomes effective January 1, 2000, and applies to health benefit plans issued or renewed on or after that date. (LJ)

Substance Abuse/Direct Pay

S.L. 1999-199 (HB 714) requires insurers, Blue Cross, and the State Employees Health Plan to reimburse "certified substance abuse counselors" when substance abuse services are covered by a particular health plan. The act defines a "certified substance abuse counselor" as an individual who is certified by the North Carolina Substance Abuse Professionals Certification Board.

The act became effective October 1, 1999, and applies to claims for payment or reimbursement on or after that date. (ER)

Physician Assistants Reimbursement

S.L. 1999-210 (SB 685) requires that health insurance plans, including the State Health Plan, provide reimbursement for services performed by physician assistants. The reimbursement is required only when the service is within the scope of practice of the physician assistant, was performed in accordance with the Medical Board's rules governing physician assistants, and would have been covered had it been performed by a physician or other health care provider. The reimbursement goes to the physician, clinic, or agency that employs the physician assistant, not directly to the physician assistant. The act also requires insurers to include a list of physician assistants and their supervising physicians in their provider directories.

The act becomes effective January 1, 2000, and applies to treatment or services rendered on or after that date. (LJ)

Contraceptive Coverage

S.L. 1999-231 (SB 90), as amended by S.L. 1999-456, Sec. 15 (HB 162, Sec. 15) requires that health insurance plans that cover prescription drugs must provide coverage for FDA-approved prescription contraceptive drugs and devices and related medical examinations. In addition, health insurance plans that provide coverage for outpatient services must provide coverage for outpatient contraceptive services, which include consultations, examinations, and procedures relating to contraceptive use that are performed on an outpatient basis. The insurer may apply the same deductibles, coinsurance, and copayments that are applied to other prescription drug and outpatient services coverages, and the insurer may levy the total coinsurance charge up front on a contraceptive drug or device that is not periodically refilled. The up-front coinsurance charge would reflect the coinsurance amount over the useful life of the drug or device.

Health insurance plans are prohibited from denying coverage or refusing to renew coverage in order to avoid providing contraceptive coverage, providing incentives to encourage individuals to accept less than the minimum protections required under this legislation or

providing incentives to health care providers to withhold contraceptive benefits. Health insurance plans are also prohibited from penalizing or reducing the reimbursement of healthcare providers because the providers prescribe contraceptives.

There are several exceptions to the requirement that health insurance plans cover prescription contraceptive drugs and devices:

- RU-486 or its generic equivalent is not required to be covered.
- Preven or its generic equivalent is not required to be covered.
- A religious employer may request a policy that excludes coverage for contraceptive drugs or devices that are contrary to the employer's religious tenets (except that the policy must still pay for a contraceptive drug or device when used to preserve the life or health of the employee or other beneficiary under the policy).
- Short-term limited duration policies and certain other types of specialized health insurance policies (such as specified disease policies) are not included in the act's requirements.

The act became effective January 1, 2000, and applies to health benefit plans issued or renewed on or after that date. (LJ)

Group Health Continuation Insurance

S.L. 1999-273 (HB 1025) amends the law governing the amount an employer may charge a former employee for continuation coverage. Both federal and State law require employers to offer continued coverage for 18 months (longer in some cases under federal law) under the employer's group health plan to employees whose coverage under the plan ends because of termination of employment (subject to certain exceptions). The federal law, known as COBRA continuation coverage, applies to employers with 20 or more employees. COBRA allows these employers to charge the employee the full group rate premium plus a two- percent administrative fee. The State group health continuation law applies to employers with less than 20 employees. This law also allows the employer to charge the former employee the full group rate premium, but it did not allow for an administrative fee. The act amends this and allows employers under the State law to charge the same 2% administrative fee that employers under the federal COBRA law are allowed to charge.

The act became effective September 1, 1999, and applies to persons who begin their continuation coverage on or after that date. (LJ)

Prescription Drug ID Card

S.L. 1999-343 (SB 513) requires the use of standardized prescription cards by health benefit plans that provide prescription coverage and issue prescription cards. The act requires each card to contain 9 distinct items of information, including the insured's name and identification number. It also requires that the cards be issued annually if any change has taken place in the insured's coverage.

The act further provides that all cards must, by January 1, 2003, contain a magnetic strip, bar code, or other technology that is capable of adjudicating a claim by means of "electronic verification." Health benefit plans that issue a single identification card for all covered services are exempt from the act, and plans that dispense prescription drugs or devises from their own pharmacies are also exempt from the act.

The act became effective July 22, 1999, and applies to policies issued on or after that date. (ER)

Miscellaneous Life and Health Insurance Changes

S.L. 1999-351 (HB 294) makes the following miscellaneous changes concerning life and health insurance:

Preexisting condition limitations restricted in specified diseases and hospital indemnity policies. The act clarifies that two types of specialized health insurance policies, "specified disease policies" and "hospital indemnity policies", are subject to the same limitations on the use of preexisting conditions as basic health insurance policies.

Disability income insurance standards set out. The act provides standards for disability income insurance, including the following:

- The disability income insurance policy must disclose information on pre-existing condition exclusions and other terms, and it must provide a description of benefits and the renewal provisions.
- The insurer that issues the policy cannot deny coverage for a disability more than two years after the policy became effective on the grounds that the disability was a preexisting condition. However, the insurer may contest coverage or deny benefits if the insured fraudulently misstated his or her health condition during the application/enrollment process.
- Rate increases are subject to restrictions on their frequency, and policyholders must be notified in advance of rate changes. Rate increases in individual disability income insurance policies require the approval of the Commissioner of Insurance.
- If the disability income insurance policy provides for integration of benefits with other sources of income, it must disclose which income sources are covered and how benefits will be reduced as a result. One income source that cannot be used to offset benefits under a disability policy is a Social Security cost-of-living increase.

Breast reconstruction coverage strengthened. In 1997, the General Assembly enacted legislation to require insurers to cover the cost of breast reconstruction after a mastectomy. In 1998, Congress passed the Women's Health and Cancer Rights Act, which was similar to but slightly broader than the 1997 state law. This act incorporates the 1998 federal changes. The primary changes are that coverage is extended to "prostheses and physical complications in all stages of mastectomy, including lymphademas" and insurers must notify their insureds when they join the plan and annually thereafter that breast reconstruction following a mastectomy is a covered benefit.

Viatical settlement regulation strengthened. The laws regulating viatical settlements are strengthened. A viatical settlement agreement is one in which a policyholder with a catastrophic or life-threatening illness assigns the right to policy proceeds to a third party in exchange for immediate funds. With certain exceptions, these third parties (known as "viatical settlement providers") already must be licensed by the Commissioner of Insurance. The act amends the laws to provide that:

- A viatical settlement broker owes a fiduciary duty to the policyholder and is obligated to act in the policyholder's best interest. This broker owes this duty regardless of how the broker is paid.
- Viatical settlement representatives and viatical settlement brokers must be registered with the Commissioner of Insurance.
- Viatical settlement providers cannot disclose the identity of the policyholder except in certain limited instances
- Viatical settlement providers must disclose their affiliation, if any, with the insurers who issue the policies being assigned. They must also inform the policyholder that there are other covered lives under the policy and that coverage may be extinguished by assignment of the policy to the viatical settlement company.

Family leave credit insurance standards set out. Although family leave credit insurance is already being sold in North Carolina, it is sold under laws that primarily regulate credit unemployment insurance. This act provides for specific regulation of family leave credit

insurance. Family leave credit insurance is purchased in connection with a loan to cover loan payments if the employee who purchased the insurance loses income because of his or her voluntary, employer-approved absence from work due to sickness or injury to an immediate family member, birth or adoption, placement of a child in a foster home, a federally-declared disaster affecting the employee's home, active military duty, or jury duty. This insurance does not cover an employee's absence due to retirement, resignation, discharge, seasonal unemployment, or disability. To be eligible for coverage, the employee must be less than 71 and must have worked at least 30 hours per week for the previous 5 consecutive weeks. The rates charged by insurers for this coverage must be based on a 60% loss ratio and must be approved by the Commissioner of Insurance. Benefits may be paid out on a monthly basis or as a lump sum payment.

Local Government Risk Pool Clarification. The act clarified that local government risk pools are subject to only those insurance laws that specifically apply to them.

This act became effective July 22, 1999; except for the provisions relating to viatical settlements, disability income insurance, and family leave credit insurance, which become effective October 1, 1999. The provision concerning farm mutual reporting became effective retroactively October 30, 1998. (LJ)

Expand Transitional Medicaid

S.L. 1999-237, Sec. 11.8 (HB 168, Sec. 11.8). See **Health.**

Additional Dental Benefits/Children's Health Insurance Program

S.L. 1999-237, Sec. 11.9 (HB 168, Sec. 11.9). See **Health.**

Managed Care

Utilization Review/ASAM Criteria

S.L. 1999-116 (HB 715) encourages managed care plans that cover substance abuse services to use the ASAM criteria (American Society of Addiction Medicine) for determining when a patient needs to be placed in a substance abuse treatment program. However, the plan is not required to use the ASAM criteria and may instead use its own criteria.

The act became effective October 1, 1999. (LJ)

Managed Care/Specialist Referral

S.L. 1999-168 (SB 344) provides that Health Maintenance Organizations (HMOs) that do not allow direct access to all network specialists must allow their enrollees to obtain an extended or standing referral to a network specialist if the enrollee has a serious or chronic degenerative, disabling, or life threatening disease or condition and the enrollee's primary care physician, in consultation with the specialist, has determined that the disease or condition requires ongoing specialty care. The extended or standing referral may be for 12 months and must be under a treatment plan coordinated with the insurer, in consultation with the primary care physician, the specialist, and the enrollee or the enrollee's representative.

The act becomes effective January 1, 2000, and applies to health benefit plans issued or renewed on or after that date. (LJ)

Prescription Drug Formularies

S.L. 1999-178 (SB 347) generally requires health benefit plans to cover "nonformulary" drugs and devices when they are medically necessary. A drug formulary is a list of medications and prescription devices that are approved for use by an insurer. "Closed formularies" represent exclusive lists. If a drug or device does not appear on a "closed formulary" an insurer will not, as a general rule, cover its usage.

This act changes that rule by requiring insurers and health plans to establish and maintain "expeditious" procedures that allow enrollees to obtain coverage for nonformulary drugs or devices when their participating physician determines that the drug or device is medically necessary. In order to qualify for coverage under this provision the following conditions must be met:

- The insurer must maintain at least one closed formulary.
- The participating physician must notify the insurer that the formulary alternatives are either ineffective in the treatment of the enrollee's condition or are reasonably expected by the physician to cause a harmful or adverse reaction.
- If coverage is being sought for a prescription drug, the participating physician must also notify the insurer that the drug is prescribed in accordance with the insurer's applicable clinical protocols or has been approved as an exception to those protocols pursuant to the insurer's exception procedure.

The act also prohibits insurers from voiding or refusing to renew a proscribing provider's contract because the provider prescribed nonformulary drugs that were medically necessary in accordance with the act.

This act applies to health plans offered by insurers, service corporations, HMOs, and multiple employer welfare arrangements. It does not apply to specialized health insurance policies such as disability income insurance, accident insurance, specified disease policies, and hospital indemnity policies.

The act becomes effective January 1, 2000, and applies to health benefit plans issued or renewed on or after that date. (ER)

Utilization Review by North Carolina Doctors

S.L. 1999-391 (SB 345) provides that beginning January 1, 2000, medical doctors must be physicians licensed in North Carolina if they are involved in any of the following utilization review procedures with respect to a claim or coverage under a managed care plan:

- The evaluation of the clinical appropriateness of a denial of certification of treatment.
- The reconsideration of that denial at an informal review level.
- The evaluation of an appeal of the denial.
- The expedited review of that denial.

The act becomes effective January 1, 2000. (LJ)

Property And Casualty Insurance

JUA Reauthorization

S.L. 1999-114 (HB 165) re-authorizes the Commissioner of Insurance to establish "JUAs". A JUA, or "joint underwriting association" is a plan under which the Commissioner, upon finding that a particular type of property or casualty insurance coverage is not readily available in the market, orders insurers to pool together to provide the coverage to those who cannot obtain it in the market. Except for a lapse from 1997 to 1999, the Commissioner has had this authority since 1986, but has never had to use it.

The rates charged by a JUA must be calculated on an actuarially-sound basis. As a result, the rate paid by a policyholder in a JUA would typically be higher than the rate paid in the private insurance market for the same coverage. This is because JUAs typically consist of higher risks. The Commissioner's JUA authority expires July 1, 2001.

Rate Cap. In 1997, the General Assembly authorized the Beach Plan to begin writing "wind-only" policies in the 18-county coastal area. This was designed to encourage insurers to write more homeowners policies in the coastal area by allowing them to drop the wind coverage. The Beach Plan would then pick up the wind coverage. However, the Beach Plan's rates for wind coverage, when combined with the cost of the remaining coverages written by the insurer, are typically higher than what the policyholder would have paid had the policyholder obtained all the coverage from the insurer. To offset this and to discourage insurers from dropping the wind coverage of their existing policyholders, a cap was placed on the rate that may be charged by the Beach Plan for the wind coverage. This cap applied only to the Beach Plan wind-only policies written in the mainland coastal area. The cap did not apply to wind-only policies written by the Beach Plan on the beaches. The rate cap also did not protect the affected homeowners from general rate increases, increases in the approved wind rate charged by the Beach Plan, or loss of premium discounts offered by insurers. The rate cap was set to expire December 31, 1999, but this act extends the cap for an additional 2 years.

The act became effective May 28, 1999. (LJ)

Increase Auto Insurance Coverage

S.L. 1999-228 (SB 756) raises the statutory minimum levels of financial responsibility necessary to drive most motor vehicles on the State's roads. These minimum levels are raised as follows:

- From $25,000 to $30,000 for the death or injury of one person.
- From $50,000 to $60,000 for the death or injury of two or more persons.
- From $15,000 to $25,000 for property damage.

Under North Carolina law, drivers are required to provide proof of financial responsibility. Without such proof, a driver who owns a motor vehicle cannot obtain a driver's license, register the vehicle, or get their license restored after it has been suspended or revoked. One way to show proof of financial responsibility is to purchase liability insurance that conforms to the statutory minimum levels of required financial responsibility.

The act becomes effective July 1, 2000. (ER)

Credit Card Payment of Insurance

S.L. 1999-365 (SB 394) allows credit cards to be used for the payment of premiums on insurance policies. In the past, the law had prohibited the use of credit cards to pay insurance premiums except in three instances: payment of premium on travel accident insurance, including airline flight insurance; payment of premium on credit card balance credit insurance, which is a specialized type of credit insurance; and payment of premium on any other type of insurance if the credit card facility is operated by a North Carolina bank and all of the credit card records are maintained in North Carolina. Most banks' credit card facilities are located in other states, leaving few, if any, banks in North Carolina qualified to accept credit card payments through their credit card facilities.

Under this act, the insurer is not required to accept credit card payments, but if it does, it must make payment by credit card available to all persons. However, like any merchant, the insurer can determine which cards it will accept. The act specifies that the insurance company, not the agent, must bear the service charge imposed by the credit card company for each transaction.

The act became effective October 1, 1999. (LJ)

Workers' Compensation Insurance

Workers' Compensation Liens Against Third Party Recoveries

S.L. 1999-194 (HB 980) changes the law concerning employer liens against third party payments to employees who received workers' compensation benefits. Prior law allowed the resident superior court judge, upon application of a party, to reduce the amount of an employer's lien against the funds recovered by an employee from a third party. The amount by which it could be reduced was within the judge's discretion, but the judge could reduce the lien only if the judgment against the third party was less than the lien or the employee and third party settled the case.

This act makes the following changes in the law on third party liens:

- The resident superior court judge may reduce the employer's lien (upon application of a party) regardless of whether the judgment is more or less than the amount of the lien. An employee often recovers only a portion of the amount of the judgment. Under the prior law, a judgment greater than the employer's lien prevented the judge from reducing the lien, even though the actual amount the employee recovered or was likely to recover from the third party was less than the employer's lien. Under the new law, the fact that the judgment is greater than the employer's lien does not prevent the judge from reducing the lien.
- Language has been added to the law to provide that the judge may consider accrued or prospective workers' compensation benefits in deciding on the amount of the employer's lien.
- The existing law gave the judge discretion, with little statutory guidance, in deciding whether to reduce and to what extent it would reduce an employer's lien. The new law spells out the following factors for the judge to consider:
  - The anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future.
  - The net recovery to plaintiff.
  - The likelihood of the plaintiff prevailing at trial or on appeal.
  - The need for finality in the litigation.
  - Any other factors the court deems just and reasonable in determining the appropriate amount of the employer's lien.

The act became effective June 18, 1999, and applies to judgments entered against and settlements entered into with third parties on or after that date. (LJ)

Workers Comp. And UIM Insurance

S.L. 1999-195 (HB 991) amends the Motor Vehicle Safety and Financial Responsibility Act by providing that when a worker is injured in a motor vehicle accident and uninsured or underinsured coverage is available, that coverage must insure any losses not covered by workers' compensation as well as the employer's subrogation lien.

Prior to the passage of this legislation, if a worker was injured on the job in an automobile accident for which uninsured or underinsured motorist coverage was available, two things would happen:

- The uninsured or underinsured coverage was reduced by the amount of workers' compensation benefits the injured worker would receive.
- Any amount left over after the reduction would be used to pay back the employer (or insurer) for the workers' compensation benefits it provided.

With the passage of this legislation, if a worker is injured on the job in an automobile accident for which uninsured or underinsured coverage is available, and the worker collects any

money from that coverage, the worker must still pay back the employer (or insurer) for the workers' compensation benefits. However, the amount the worker collects from the uninsured or underinsured coverage will no longer be reduced by the amount of workers' compensation benefits received. In addition, the legislation also provides that it cannot be construed to require that coverage exceed the applicable uninsured or underinsured policy limits, and further provides that a worker cannot recover for any damages that were already paid by workers' compensation.

The act became effective October 1, 1999, and applies to policies issued or renewed on or after that date. (ER)

Workers' Compensation/AFC Years

S.L. 1999-158 (SB 214). See **Employment.**

Miscellaneous

Technical Changes

S.L. 1999-132 (HB 296), as amended by S.L. 1999-294, Sec. 11(a) (SB 594, Sec. 11(a)) makes numerous technical changes to the insurance laws and insurance-related laws.

The following statutes are repealed:

- G.S. 58-3-125, which provides for revocation of an insurer's license for violating certain laws. There is another provision of the law that already provides for suspension or revocation of an insurer's license for violating any applicable law.
- G.S. 59-6-10, which refers to underwriting agencies consisting of two or more insurers doing only reinsurance business in this State. This statute was originally enacted in 1919. According to the Department of Insurance, there are no such entities.
- G.S. 58-71-90, which provides that appeals by bail bondsmen and runners of denials, suspension, or revocation of their licenses are governed by the appeals procedures of the Administrative Procedures Act. With G.S. 58-71-90 repealed, these appeals will come under the general insurance appeals statute (G.S. 58-2-75).

Related conforming changes to other statutes are also made:

- The State Fire and Rescue Commission provides workers' compensation coverage for volunteer fire departments and rescue units that wish to participate. The money to pay the premiums for this coverage comes from a combination of State appropriations and contributions by the participating units. The act eliminates the prohibition on a unit getting coverage for a particular year if it fails to make its contribution by July 1st.
- References to "continuing care retirement communities" are changed to "facilities." The term "facility" is already defined in Article 64 of Chapter 58 as a facility that provides continuing care.
- The North Carolina Rate Bureau is allowed to file its workers' compensation filing (if any) later in the year than September 1st, with the Commissioner's approval. The language concerning rate deviations is revised to require that they be based on sound actuarial principles. Various minor conforming changes concerning workers' compensation insurance are made.
- Language is restored to the law to provide that late enrollees in small employer group health plans (plans offered by employers with 50 or fewer employees) are subject to pre-existing condition limitations for up to 18 months. The act is designed to eliminate potential concerns that late enrollees could be completely excluded from coverage. The language added was in the Small Employer Group Reform law prior to 1997 and was inadvertently repealed during the major rewrite of the health

insurance laws in 1997. The intent of the 1997 rewrite was to leave all of the then existing protections for employee insurance in place except to the extent necessary to comply with federal law.

- A provision is added to make clear that the limited mental parity provisions that were enacted in 1997 only apply to true group health insurance policies, not other types of special health policies such as disability income insurance or cancer policies.
- A provision is added to make clear that two types of plans – the basic and standard plans – issued by insurance companies to self-employed individuals will remain guaranteed-issue plans.
- The definition of an "eligible individual", which determines when individuals are eligible for guaranteed issuance of individual health insurance coverage, is corrected.
- A "savings" clause that ensured that the 1997 legislative rewrite of managed care laws did not repeal existing Department of Insurance rules on commercial insurance company PPO plans is amended to also ensure that the existing service corporation PPO rules were not affected.
- The act makes clear that a bail bondsmen/runner license held simultaneously with a surety bond license is considered one license for purposes of disciplinary actions involving suspension, revocation, or nonrenewal of the licenses.
- The recent merger of the Carolinas Association of Professional Insurance Agents with the Independent Insurance Agents of North Carolina is recognized, and appropriate changes are made in several statutes that refer to those associations by name.
- The outdated term "filing face" of the policy is replaced with the more modern term "declarations page."
- A statutory reference to self-insured group workers' compensation funds (now Article 47 of Chapter 58) is corrected. The term "insurer" under the insurance rehabilitation and liquidation law is redefined to pick up entities that were conducting insurance business unlawfully without a license and employers that individually self-insure their workers' compensation liability.
- The list of 22 traffic offenses for which facility recoupment surcharges are authorized is repealed because they are no longer necessary.
- A conforming change to the definition of "motor vehicle insurance" in the Reinsurance Facility laws is made to include "underinsured motorist coverage."
- The law governing the types of auto insurance coverages and the amounts of those coverages that an insurer can cede to the Reinsurance Facility is amended to reflect what is currently being ceded.
- Outdated language about the initial (1973) governing board of the Reinsurance Facility is repealed. The language is also amended to reflect the increase in the quorum of the board from five to seven members, the increase in the number of members required to call a special meeting, and to allow the chair to serve until a successor chair is elected and qualified.
- References to "certificates of authority" are changed to the more modern term "licenses".
- Cross-references to the insurance company examination laws are updated to reflect the 1998 amendments that govern when insurers can be assessed the cost of examinations.
- The existing statutes on motor clubs are repealed and are replaced by nearly identical provisions that have been reorganized for clarity.
- The definition of a "certified audit" under the laws requiring self-insured employers (workers' compensation) to be licensed by the Commissioner of Insurance are amended.
- The criteria for an employer to self-insure for workers' compensation is redefined.
- Each self-insured employer needs to submit an actuarial report on its losses and loss expense reserves only for its workers' compensation experience in North Carolina.

- The annual requirement for the submission of a payroll report by self-insured employers to the Commissioner is repealed. The report will be required when requested by the Commissioner.

The act became effective June 4, 1999, except for the provisions relating to workers' compensation, which become effective October 1, 1999. (LJ)

Insurance Premium Financing

S.L. 1999-157 (SB 643) amends the insurance premium financing laws, primarily to modernize and update those laws. The new provisions will allow insurance premium financing companies to use microfilm, microfiche, and imaging systems to store records that are required to be kept on file for inspection by the Commissioner and to notify the insured of cancellation of its insurance contract by mail, personal delivery, e-mail, or fax (existing law required mail notification). The act also:

- Changes the starting date for calculating service charges when more than one insurance contract is financed under an agreement, although the maximum finance charges and service charges remain unchanged in the law.
- Renders the insurance policy void if the agent or premium financing company informs the insurer that the initial down payment for the premium has been dishonored.
- Requires the insurer to return unearned premiums to the premium financing company within 30 days when the insurance policy being financed is canceled. The insurer cannot offset the return premiums against other debts that the insured owes the insurer on other policies.

The act became effective October 1, 1999. (LJ)

Insurance Claims Payments/Year 2000

S.L. 1999-184 (SB 839) assures that health care providers will be able to maintain a steady income stream if insurers, service corporations (including Blue Cross) and Health Maintenance Organizations (HMOs) are unable to process claims due to Year 2000 related problems.

With the passage of this legislation, when a health insurer, service corporation, or HMO cannot process claims in a timely manner due to Year 2000 related problems, it must report the problem to the Commissioner of Insurance (Commissioner) within five days of learning of the problem. The Commissioner is then required to order the insurer to make interim payments to health care providers if, after investigation, the Commissioner determines that due to Year 2000 related problems in the insurer's "electronic systems" it cannot make payments in a timely manner in accordance with its contractual obligations. If the insurer does not have a contract with the provider and is having Year 2000 related claims processing problems, the Commissioner is required to order the insurer to pay claims within 30 days of receiving a "clean claim."

The amount of the interim payments is to be calculated in one of two ways:

- If there is a federal law requiring interim payments to providers in the case of Year 2000 related claims processing problems, the Commissioner is required to use the same methodology, if any, that is required by the federal legislation.
- If there is no applicable federal law, the insurer is required to pay the provider at 80% of the amount it paid the provider during the same calendar month in 1999, or if there was no contract or if the provider did not submit any claims during the same calendar month in 1999, the insurer is supposed to pay an amount that is equal to the average of the most recent 3 months.

The act became effective June 18, 1999, and expires on December 31, 2000. (ER)

Town/County Financial Reports

S.L. 1999-192 (SB 389) amends the laws governing farm mutual reporting requirements. In 1998, the General Assembly enacted a law to relieve the smallest farm mutuals (those with fewer than 400 policyholders and $150,000 in annual written premium) from certain reporting requirements applicable to insurance companies generally. These small farm mutuals were relieved from the filing of monthly, quarterly, and semi-annual financial reports but not the annual report. In addition, the legislation was intended to allow them, when filing their annual reports with the Department of Insurance, to submit audited financial statements prepared by certified public accountants in lieu of the standard National Association of Insurance Commissioners (NAIC) forms used by insurers. This act adds language to make clear that these small farm mutuals can file audited financial statements in lieu of the NAIC reporting form.

The act is retroactively effective to October 30, 1998, the date on which the 1998 law took effect. (LJ)

"Family Friendly" UI Exception

S.L. 1999-196 (HB 277) makes two changes to the State's unemployment laws:

- It makes it possible to collect unemployment benefits if you left your job solely because you could not accept work during a particular shift due to a lack of childcare or elder care.
- Once unemployed, it makes it possible to turn down available jobs and still collect unemployment benefits, provided the reason for turning down work is based on the lack of childcare or elder care during the shift that work was offered.

The act became effective July 1, 1999, expires on June 30, 2001, and provides that an employer's account will not be charged if benefits are awarded based on the act. (ER)

Insurance Amendments

S.L. 1999-219 (HB 306) makes the following changes to the insurance laws:

- Unless a particular insurance statute provides otherwise, all hearings before the Department of Insurance (Department) will be held in accordance with both Article 2 of Chapter 58 of the General Statutes (governs insurance hearings and appeals) and the Administrative Procedure Act. The time and place of the hearing will be designated by the Department in a written notice sent to the person that is required to appear at the hearing, and the notice must state the subject of the hearing and any charges against the person.
- Appeals under the Beach and Fair Access to Insurance Requirements (FAIR) Plans will be heard by the Department pursuant to rules adopted by the Department. The previous law required the appeal hearing to be recorded and transcribed, with each side sharing the costs, although the prevailing side recovered those costs once the appeal reached "final adjudication." The act amends this law to provide that if the appeal involves a matter between an insured and the Beach or FAIR Plans, the costs are borne equally by the insured and the Plan unless the Commissioner orders the Plan to pay when the insured is financially unable to do so.
- The Department of Health and Human Services (DHHS) may authorize additional beds for a continuing care retirement facility that is in receivership under the Commissioner of Insurance (Commissioner) if the court finds that this is in the best interests of the facility or it will best serve the welfare of persons already under contract or who may contract with the facility.
- The State Handicapped Protection Act has prohibited commercial insurance companies and service corporations from denying individual insurance coverage to a

handicapped person solely because of his or her handicap, although they can refuse to cover preexisting conditions. The act rewrites the language allowing pre-existing conditions to be excluded so that it conforms to the general law on pre-existing conditions for individual policies.

- Currently, a family care home is deemed a "residential" use of property for a number of purposes, including for insurance classification purposes. However, group homes have reportedly had difficulty finding insurers willing to cover those risks under "residential" coverages. The act repeals the requirement that group homes be treated like residences for insurance purposes. This change is designed to encourage insurers to write property and liability coverages for family care homes.
- Deregulates commercial aircraft insurance.
- Requires surplus lines licensees to provide additional information to the Department of Insurance. The new information includes the policy number and policy period for each policy, the premium tax amount, and the address of the licensee.
- Provides that the insurance laws applicable to insurance companies admitted to do business in North Carolina do not apply to surplus lines insurance companies except for Article 21 of Chapter 58 of the General Statutes (the Surplus Lines Act) and any other statute that specifically references surplus lines insurance or nonadmitted insurers.
- Amends the State tax confidentiality statute to enable the Department of Revenue to provide the Self Insurance Guaranty Association with information on self-insurers' "premiums" so that the Association can collect certain assessments. Also directs the Secretary of Revenue to provide this information to the Association on individually self-insured employers and directs the Commissioner to provide the same information for group self-insured employers.
- Repeals the Commissioner's biennial report to the General Assembly. The Commissioner would still be required to report recommended changes to the insurance laws to the Governor and the General Assembly from time to time.
- Repeals the agency business cessation reporting law because the Department no longer needs this information.
- Amends the Standard Valuation Law (G.S. 58-58-50) to provide that the Commissioner may adopt rules that recognize new mortality tables to determine reserve liabilities for annuities and minimum valuation standards for reserves of life insurance companies. The Commissioner may consider model rules recommended by the National Association of Insurance Commissioners.
- Amends the law concerning the North Carolina Rate Bureau's jurisdiction to clarify that mechanical breakdown insurance on nonfleet private passenger vehicles and similar insurance coverages, such as emergency road service assistance, trip interruption reimbursement, rental car reimbursement, and tire coverage, do not fall under the jurisdiction of the Bureau.

Most of this act took effect June 25, 1999. However, the provisions relating to commercial aircraft insurance become effective October 1, 1999, and the change relating to the information provided by surplus lines insurers becomes effective January 1, 2000. (LJ)

Service Corporation and HMO Laws

S.L. 1999-244 (SB 766) clarifies that service corporations and Health Maintenance Organizations (HMOs) are subject to several additional regulatory provisions that currently do not expressly apply to them. The insurance regulatory surcharge will also be imposed on service corporations and HMOs for the first time next year. Although regulated by the Department of Insurance, service corporations (Blue Cross and Delta Dental) and HMOs are regulated separately from indemnity insurance companies. However, most of the laws that apply to indemnity insurers also apply to service corporations and HMOs.

The act becomes effective January 1, 2000. (LJ)

Miscellaneous Insurance Changes

S.L. 1999-294 (SB 594) makes the following miscellaneous changes to the insurance laws:

- Deletes title insurance from the Insurance Regulatory Reform Act (Act). That Act, which passed during the 1986 liability insurance crisis, provides certain protection to insureds with respect to cancellations and nonrenewals of policies. The Act covers only certain types of policies, including title insurance. The Department of Insurance recommended removing title insurance from the Act because title insurance does not readily fit under the Act's provisions and because title insurance regulation is already provided for elsewhere in the insurance laws.
- Amends the law that currently governs professional liability insurance and commercial general liability insurance policies that provide for extended reporting periods for claims arising during the expiring policy period. The law had provided that the liability limits for the extended reporting period must be the same as the expiring policy aggregate. This act provides that the liability limits for the extended reporting period must be the same as the expiring policy's limits at its inception.
- Expands the definition of who is an insurer for purposes of the insurance fraud laws.
- Corrects an outdated reference in the littering laws. The reference is to the statute that relates to the assessment of insurance points.
- Provides that when the General Assembly enacts a law that applies to health benefit plans delivered, issued for delivery, or renewed on or after a certain date, the renewal is presumed to occur on the anniversary date on which coverage was first effective on the person or person covered by the health benefit plan. The act also provides that when the General Assembly enacts a law relating to a "health benefit plan" in the future, the term health benefit plan will be defined as provided in this act unless the legislation provides otherwise. This definition is the typical definition of a "health benefit plan," except that it also adds "short-term limited duration policies" to the list of health insurance plans that are not included under the term "health benefit plan."
- Amends the law governing the Commissioner's authority to issue cease and desist orders against unauthorized insurance companies.
- Amends the law that governs the admission of foreign or alien insurance companies to do business in North Carolina to ensure that the Commissioner can delay granting the company a license if the operation of the company in this State would be hazardous to prospective policyholders, creditors, or the general public. The Commissioner may license the company after the grounds for delay have been remedied.
- Provides that policies written by surety bondsmen fall under the statute that regulates the statutory deposits that surety bond companies are required to make with the Commissioner as a condition of doing business in North Carolina. Deposits (and part of the interest thereon) may be used by the Commissioner to satisfy the company's unpaid policy liabilities that have been established by settlement or final judgment.
- Clarifies that the law requiring insurance companies to promptly acknowledge a filed claim also applies to Health Maintenance Organizations (HMOs), service corporations, and multiple employer welfare arrangements and that a claimant, for purposes of this law, includes both the insured and the insured's health care provider or health care facility who is responsible for directly filing the claim on behalf of the insured.
- Delays the effective date of the licensing law for third party administrators who administer self-insured workers' compensation plans. The law is currently scheduled

to take effect January 1, 2000, but this section will delay the effective date for two years – until January 1, 2002. The Department of Insurance has asked for additional funding to administer the law and has requested the delay until the funding is available.

- Repeals two subsections of the law relating to Facility recoupment insurance surcharges on motor vehicles.
- Authorizes the Office of Administrative Hearings Codifier of Rules to update obsolete statutory references in the Insurance rules without those changes being required to go through the usual rules review process.
- Amends S.L. 1999-178 (SB 347) to provide a definition for a "closed formulary." (See above for summary.)

Most of the provisions of this act became effective October 1, 1999, although some became effective on July 14, 1999. (LJ)

Omnibus ESC Changes

S.L. 1999-430 (HB 276) makes a number of changes to the Employment Security Law.

Electronic Payments. Employers may now pay their quarterly taxes by electronic funds transfer. This act also authorizes the Employment Security Commission (ESC) to establish policies that allow employers to pay their taxes by credit card.

Computerized Quarterly Reporting. Employers with 100 or more employees are now required to file their Employer's Quarterly Tax and Wage Reports on magnetic tapes or diskettes. Prior to the passage of this legislation, only employers with 250 or more employees were required to file their reports in this fashion.

Employer Contribution Rates. This act cross-references the standard beginning rate of contribution set out in G.S. 96-9(b)(1) as the beginning contribution rate for a transferring employer.

Extended Benefits. The act amends the extended benefits provisions of the Employment Security Law in order to comply with federal requirements. Persons seeking extended unemployment insurance benefits must now have had 20 weeks of full-time insured employment in order to be eligible for these benefits.

Automated Partial Unemployment Claims. Employers may now file claims for employees through "automation." This provision became effective July 22, 1999.

Appeals. Employers and claimants now have 15 days, rather than 10 working days, to file a written appeal of adjudication or to protest a claim.

Eligibility Issues. The ESC now has 45 days, rather than 20 working days, to raise an issue as to the eligibility or qualification of a claimant to receive unemployment insurance benefits.

Personal Tax Information. The Department of Revenue is now required to provide the following information, as it appears on tax forms, to the Commission: spousal social security numbers; exemptions and credits for children; expenses for child and dependent care; and credits for child and dependent care and other qualifying expenses. This information is confidential and may only be used in a nonidentifiable form for statistical purposes to help the Commission conduct its "NC WORKS" study of the working poor.

Job Service Employer Committees. The act directs the ESC Chairman to appoint the members to the county Job Service Employer Committees. The ESC is also directed to adopt rules and regulations for the meetings of each Job Service Employer Committee.

Qualifying Wage Tests. The act changes the test for qualifying wages for second year benefits so that it is consistent with the test used for qualifying wages for the first year of benefits.

The provisions related to eligibility issues and qualifying wage tests became effective July 1, 1999. All other provisions became effective July 22, 1999. (ER)

Title Insurance Unearned Premium Reserves

S.L. 1999-383 (HB 1186) revises the method for calculating the amount that title insurance companies must maintain as unearned premium reserves. Unearned premium reserves represent the unearned portion of premiums charged on title insurance policies. The effect of the change is to require less money to be reserved up front. The act also provides that a supplemental reserve must be established if necessary to cover the company's liabilities, claims, and loss adjustment expenses. In addition, each title insurer must file with its annual statement a certification of a member in good standing of the American Academy of Actuaries, and the actuarial certification must conform to National Association of Insurance Commissioners requirements.

The act became effective October 1, 1999. (LJ)

Insurance Fee Repeals and Increases

S.L. 1999-435 (SB 562). See **Taxation.**

Major Pending Legislation

Managed Care Changes

HB 736 would provide additional assurances of patient access to providers in managed care plans, require updating of provider directories, add more information to be disclosed to consumers, enhance access to eye care providers, and provide transitional care for patients whose doctors leave or are terminated from Health Maintenance Organizations. The bill has passed the House and is pending in the Senate. (LJ)

Acupuncturist Reimbursement

HB 678 would authorize direct insurance reimbursement for acupuncturists under certain circumstances. The bill has passed the House and is pending in the Senate. (LJ)

Liability of Managed Care Entities

HB 1133 would allow persons to sue their managed care plans for negligent decisions in delaying or denying coverage. The bill has passed the House and is pending in the Senate. (LJ)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999–395, Sec. 2.1(2) (HB 163, Sec. 2.1(2)) authorizes the Legislative Research Commission to study:

- Managed care issues, including any willing provider, patients' rights, managed care entity liability, creation of an office of consumer advocacy for insurance, prompt payment of health claims, and related issues.
- Mental health and chemical dependency parity.

- Health reform recommendations of the Health Care Planning Commission and its advisory committees that have not been implemented but are still needed and other health reform issues.
- Pharmacy choice/competition.

These sections became effective July 1, 1999. (LJ)

Chapter 12
Local Government

Esther Manheimer (EM), Giles Perry (GSP),
Barbara Riley (BR), Ebher Rossi (ER)

Enacted Legislation

Special Olympics Bus Use

S.L. 1999-01 (SB 108) provides that any public school system that had a "participating host town" in the 1999 Special Olympics World Summer Games may provide school busses for use by the Special Olympics for the period from June 15, 1999, through July 10, 1999.

The act became effective March 10, 1999. (ER)

Community College Property Transfers

S.L. 1999-115 (HB 239) makes several changes to the law in order to facilitate installment financing entered into by counties to make improvements to community college property. Gaston, Greene, Halifax, Harnett, Montgomery, Nash, Sampson, and Wilson Counties had received this authority through local acts passed by the General Assembly since 1993. Seventy-five counties also have similar authority for public school construction and renovation.

The act authorizes:

- Counties to acquire real or personal property for use by a community college within the county when requested to do so by the board of trustees for the college and after a public hearing is held on the issue. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a community college is not an agency of the county.
- Community colleges' boards of trustees to contract with the county for the erection, improvement, renovation, or repair of buildings located on property owned by the county. Under general law, local boards of trustees of community colleges are required to hold title to all community college property that was donated to the college or acquired with tax revenue and therefore have no authority to make contracts concerning the construction or repair of buildings located on sites not owned by them.
- Community college's board of trustees to transfer to the county property on which a community college building in need of renovation or repair is located for any price agreed to by the board of trustees and the county. Under general law, a board of trustees may not transfer property unless it is undesirable or unnecessary for the purposes of the community college.

The effect of these changes is twofold. First, certain installment financing may now be used for community college construction or renovation. The installment financing that can be used is an installment contract secured by a security interest in the building constructed or renovated. One type of installment financing is the issuance of certificates of participation. Second, counties may receive a sales tax refund on the materials and supplies. Community colleges are not entitled to a refund of sales and use taxes paid.

The substantive provisions of the act became effective May 28, 1999 and apply to agreements entered into on or after that date. (EM)

Clarify Annexation Remand

S.L. 1999-148 (SB 773) clarifies the time period for action to be taken by a city on remand from the court of appeals on an annexation ordinance. The time period to act is now 90 days from the entry of the order. Prior law had allowed three months from the receipt by the city of the court order.

The act became effective October 1, 1999, and applies to annexation ordinances adopted on or after that date. (BR)

Validate Certain Bond Referenda

S.L. 1999-152 (SB 436) ratifies, approves, confirms, and validates any bond referendum held by a unit of local government between April 1, 1997, and June 1, 1998. Available information suggests that the Montgomery Water District II held a bond referendum that did not comply with North Carolina law and this bill seeks to remedy the situation by ratifying all bond referenda that were held during the above referenced time period.

The act became effective June 4, 1999. (ER)

Local Government Retirement Definition

S.L. 1999-167 (SB 638), as amended by S.L. 1999-456, Sec. 37 (HB 162, Sec. 37). See **Employment**.

Local Red Light Cameras

S.L. 1999-181 (HB 426) and S.L. 1999-182 (HB 514), as amended by S.L. 1999-456 Sec. 48 (HB 162, Sec 48), and S.L. 1999-17 (HB 50) all amend S.L. 1997-216. S.L. 1997-216 created G.S. 160A-300.1, which, as amended by the preceding bills, allows the cities of Fayetteville, Greensboro, High Point, Rocky Mount, and Wilmington, and the towns of Cornelius, Huntersville, and Mathews to adopt a local ordinance to enforce traffic offenses such as running a red light or stop sign through the use of a "traffic control photographic system". A traffic control photographic system is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor that works in conjunction with a traffic control device to automatically produce photographs, video, or digital images of vehicles violating these types of statutes or ordinances. A sign identifying each traffic control photographic system must be placed not more than 300 feet from all photographic systems.

The owner of a vehicle photographed is responsible for the violation unless the owner can furnish evidence that, at the time of the offense, the vehicle was under the care, custody or control of another person. The violation is noncriminal and a civil penalty of $50 is assessed. In addition, no license or insurance points may be assigned to the owner or the driver of the vehicle. A citation will be mailed to the owner. Personal service is not required. If the owner fails to provide evidence or pay the civil penalty they waive the right to contest the responsibility and will be subject to a civil penalty not to exceed $100. The cities must institute a nonjudicial administrative hearing to review objections to citations or penalties issued. These acts are effective when they become law.

S.L. 1999-17 became effective April 7, 1999. S.L. 1999-181 and S.L. 1999-182 become effective January 1, 2000.

Caveat. S.L. 1999-181 (HB 426) and S.L. 1999-182 (HB 514), were essentially combined in the technical corrections bill, S.L. 1999-456 (HB 162, Sec 48). However, in the process, the City of Greenville, which was authorized to use a traffic control photographic system in S.L. 1999-182 (HB 514), was mistakenly omitted from the technical corrections bill.

Currently, there exists a dispute regarding whether the monies collected under G.S. 160A-300.1 belong to the City of Charlotte, the only city to implement this system thus far, or the school board under the North Carolina Constitution, Article IX, Section 7. (EM)

Town/County Financial Reports

S.L. 1999-192 (SB 389). See **Insurance.**

Transportation Costs/Involuntary Commitment

S.L. 1999-201 (HB 972) as amended by S.L. 1999-456, Sec. 36 (HB 162, Sec. 36). See **Health.**

Highway Lighting Service Districts

S.L. 1999-224 (HB 755) authorizes towns with a population of between 2,000 and 2,500 located in a county with no more that 946 square miles to establish service districts to finance lighting at interstate highway interchange ramps.

The act became effective June 25, 1999. (GP)

Repeal Reporting Requirements for Regional Economic Development Commissions.

S.L. 1999-237, Sec. 16.5 (HB 168, Sec. 16.5) repeals the statutory requirement that annual reports be filed with the General Assembly for the Western North Carolina Regional Economic Development Commission, the Northeastern North Carolina Regional Economic Development Commission, and the Southeastern North Carolina Regional Economic Development Commission.

The act became effective July 1, 1999. (BR)

Modify NE Regional Economic Development Commission

S.L. 1999-237, Sec. 16.6 (HB 168, Sec. 16.6) requires that each member appointed to the Northeastern North Carolina Regional Economic Development Commission be an experienced business person who resides most of the year in one or more counties within the region. The specifications for appointments by each appointing authority are deleted.

The act became effective July 1, 1999. (BR)

Best Value Information Technology

S.L. 1999-237, Sec. 39 (HB 162, Sec. 39) allows counties, cities, towns, or subdivisions to acquire information technology using the "Best Value" procurement method. "Best Value" procurement means selecting a contractor based on which proposal offers the best trade-off between price and performance. The award decision is made based on multiple factors, including: total cost of ownership; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

The act became effective August 13, 1999. (EM)

Recreational Motor Vehicle Tax Budgeting

S.L. 1999-261 (SB 484). See **Taxation.**

Transfer Certain Septic Systems

S.L. 1999-288 (HB 638) authorizes local governments in Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, Perquimans, Tyrrell, and Washington Counties to establish joint agencies to own and operate provisionally approved or innovative septic tank systems. The bill also authorizes the owner of a provisionally approved or innovative septic tank system to transfer ownership of the system to a joint agency established under this act. In addition, Gates and Hertford counties may adopt ordinances providing that fees for inspections of septic systems may be billed with property taxes.

The act became effective July 14, 1999, and the provisions relating to fees for inspections apply to fees imposed for inspections performed on or after that date. (EM)

Emergency Traffic Ordinances

S.L. 1999-310 (SB 527). See **Transportation.**

Volunteer Fire Department/Rescue Workers

S.L. 1999-319 (SB 515) increases the number of paid members a volunteer fire department or rescue squad may have and remain eligible for grants from the Volunteer Fire Department Fund. The number of allowable full-time employees is increased from two to the equivalent of three full-time paid members.

The act became effective October 1, 1999. (BR)

Alcoholic Beverage Sales

S.L. 1999-322 (SB 812) provides that food businesses, retail businesses, or eating establishments that are located in an "Urban Redevelopment Area" can not have alcoholic beverage sales in excess of 50% of their total annual sales. The act sets out the procedure for record keeping and for investigations.

The act became effective October 1, 1999. (EM)

County Bonds for Landbanking

S.L. 1999-378 (HB 1084) authorizes counties to issue bonds to finance the cost of providing land for present or future county corporate, open space, community college, and public school purposes.

The act became effective August 4, 1999. (GP)

Authorize Public Hospital Debt

S.L. 1999-386 (HB 1120). See **Taxation.**

Expand Municipal Service Districts

S.L. 1999-388 (SB 772) authorizes the creation of municipal service districts for urban revitalization projects in certain cities.

The act became effective August 4, 1999. (GP)

Municipal Incorporation Process

S.L. 1999-458 (HB 964) makes several changes to the process and criteria used by the Joint Legislative Commission on Municipal Incorporation (Commission) to evaluate incorporation petitions. It also limits tax revenue available to new municipalities that do not provide a minimum level of services. The act:

- Requires that the petition contain a statement that the proposed municipality will have a budget ordinance with an ad valorem tax of at least 5¢ on the $100 valuation.
- Requires the petition to contain a statement that the proposed municipality will offer four municipal services.
- Requires a proposed municipality to have at least 100 residents and a population density of at least 250 persons per square mile in order to receive a positive recommendation from the Commission.
- Repeals the requirement that the area proposed for incorporation meet the development criteria of the annexation statutes in order to receive a positive recommendation.
- Adds a requirement that the petition state the financial impact the proposed incorporation will have on other local governments.
- Requires municipalities incorporated on or after January 1, 2000 to offer four municipal services in order to receive "Powell Bill" street funds, collect local sales and use taxes, or collect franchise taxes.

The provisions of the act generally affect petitions filed on or after July 20, 1999, but do not apply to petitions from Gray's Creek and Union Cross filed before July 1, 2002. (GP)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. XXIA (HB 163, Sec. XXIA) authorizes the Legislative Research Commission to study the issue of home rule powers for cities and counties. The Commission shall study home rule provisions in the constitutions and statutes of other states to ensure needed flexibility within a framework of safeguards and oversight. The Commission may report to the 2001 General Assembly.

The act became effective July 1, 1999. (BR)

New/Independent Studies/Commissions

Create a Commission to Address Smart Growth, Growth Management and Development Issues

S.L. 1999-237 (HB 168 Sec. 16.7) as amended by S.L. 1999-456, Sec. 55 (HB 162, Sec. 55) creates a commission that addresses "smart growth." This commission is to be comprised of

37 members that are to be selected by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House.

This new commission is charged with studying growth management and development issues and recommending initiatives that promote comprehensive and coordinated local, regional, and State planning. Among the issues the commission is charged with studying are:

- Legislation introduced during the 1999 Regular Session (HB 1468) as well as smart Developing strategies that produce a skilled competitive workforce.
- Advising government and business about policies and programs that enhance the State's workforce.
- Coordinating strategies for cooperation between government, industry, and academia.
- Providing ongoing oversight of the "One-Stop" programs.
- Developing a unified State plan for workforce training and development.
- Reviewing government funded workforce development programs for effectiveness, duplication, coordination, and fiscal accountability.
- Submitting a comprehensive workforce development plan to the Governor and General Assembly that sets out goals, assesses current programs and policies, and makes recommendations for policy, program, and funding changes.
    - Serving as the State's "Work Force Investment Board" for purposes of the federal growth legislation in other states.
    - The effects of population growth on infrastructure, the environment, and the economy.
    - Long term planning options, including land-use management and the transfer of development rights.
    - Incentives that encourage local governments to develop and implement sound land-use management practices.

The commission is required to submit an interim report to the 2000 Regular Session of the General Assembly and a final report and recommendations to the General Assembly, the Governor and the general public by January 15, 2001.

This section became effective July 1, 1999. (ER)

Workforce Development Commission

S.L. 1999-237, Sec. 16.15 (HB 168, Sec. 16.15) creates a new commission within the Department of Commerce that is charged with:

- Workforce Investment Act of 1998.

This section became effective July 1, 1999. (ER)

Chapter 13
Property, Trusts, and Estates

Karen Cochrane-Brown (KCB), Tim Hovis (TH), Esther Manheimer (EM),
Walker Reagan (WR), Steve Rose (SR),
Ebher Rossi (ER), Rick Zechini (RZ)

Enacted Legislation
Property

Require Rental Property Heat

S.L. 1999-14 (SB 41) directs any city with a population of 200,000 or more to adopt an ordinance requiring that by January 1, 2000, every dwelling unit leased as rental property within the city to have a central or electric heating system or heating appliances sufficient to heat at least one habitable room, excluding the kitchen, to a minimum of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit. If a dwelling unit contains a heating system or heating appliances that meet these requirements, the owner is not required to install a new system or new appliances but is required to maintain the existing system or appliances in a good and safe working condition. Otherwise, the owner must install a system or appliances that meet the requirements and maintain the system or appliances in a good and safe working condition. The use of portable kerosene heaters is not an acceptable means of complying with the heating requirement, but this type of heater may be used as a supplementary source of heat. The act allows cities to adopt more stringent heating requirements.

The act became effective April 1, 1999. (RZ)

Improve Torrens Law

S.L. 1999-59 (HB 1088) amends the Torrens land title registration law to modernize the law and make the administrative processing of Torrens titles more consistent with the registration of other land titles. The former cap on fees that may be charged or collected for title examiners in the Torrens process is eliminated and the act authorizes the clerk of court to award a reasonable fee. The act also makes the allowable charges for filing and copies of Torrens titles consistent with other charges the register of deeds is authorized to charge. Under the new law, Torrens registrations are to be filed and indexed as other real property transactions and the requirement to maintain a separate Torrens registration book is eliminated. The act requires the clerk, when requested, to certify to the register of deeds any judgments, liens, or notice of lis pendens, and for these matters to be noted on the certificate of title. Tax delinquencies are to be noticed on the title and become a lien against the property on the date the notice is recorded.

The act becomes effective January 1, 2000. (WR)

Land Records Statutes Technical Modifications

S.L. 1999-119 (HB 214) transfers from the Department of Environment and Natural Resources to the Department of the Secretary of State responsibility for the following:

- Administration of the statewide program for the improvement of county land records.
- Approval of the installation of a parcel identifier number index in lieu of an alphabetical index by a register of deeds.

The act became effective May 28, 1999. (RZ)

Foreclosure Notice

S.L. 1999-137 (HB 226). See **Civil Procedure**.

Real Estate Salesman/Broker Licensure

S.L. 1999-200 (HB 899). See **Commercial Law**.

Update Corporate Conveyancing

S.L. 1999-221 (SB 761) amends the laws governing the execution of corporate conveyances of interests in real property. The act eliminates the requirement that the signatures of corporate executive officers need to be attested to by another corporate official and eliminates the requirement that the instrument be sealed with the corporate seal. It amends the ten-year statute of limitations to cover the conveyance of real property that will no longer be under seal and eliminates the necessity of recording a corporate resolution authorizing the signatories to corporate documents when the instrument is signed by specified executive officials.

Prior to this act, the law required that a conveyance of corporate real property must be signed by an executive officer of the corporation, that the officer's signature and authority be attested to by another corporate officer, and that the instrument be sealed with the corporate seal. The ten-year statute of limitation applies to instruments under seal, and thus includes conveyances of real property. For deeds of the Home Owners Loan Corporation or any corporation where the majority of the stock is owned by the United States government, a resolution of the board of directors of the corporation authorizing the corporate officers to sign deeds on behalf of the corporation must be recorded.

The act makes these changes:

- Expands the types of corporate officers that may execute corporate conveyances of real property to include those authorized by corporate resolution. Also provides that the corporate seal does not have to be included on the instrument in order for the execution of the instrument to be valid. Makes conforming changes to the statutory forms.
- Adds a new statutory section to provide that the seal of a signing party to a conveyance of an interest in real property is not necessary. Only the seal of the notary public is required.
- Amends the ten-year statute of limitations law to include an instrument conveying an interest in real property.
- Eliminates the requirement that a corporate officer's signature must be attested to in order for the execution of the instrument on behalf of the corporation to be valid. Also permits a corporation to authorize some person other than the statutorily listed corporate officers to execute instruments on behalf of the corporation if there is a corporate resolution that is recorded to show the authorization.

The provisions regarding corporate signatures became effective October 1, 1999. The other provisions became effective when June 25, 1999, and apply to instruments recorded prior to, on, or after that date, thereby validating the execution of instruments that might not have been valid under current law, except for those instruments subject to pending litigation. (SR)

Real Property Tax Penalty

S.L. 1999-287 (SB 817). See **Taxation**.

Vacation Rental Act

S.L. 1999-420 (SB 974), as amended by S.L. 1999-456, Sec. 9 (HB 162, Sec. 9), creates the Vacation Rental Property Act. This act governs short-term or vacation rental situations and mandates special notice requirements in a vacation rental agreement. In addition, the act defines how funds collected in advance for vacation rentals are to be held and applied, provides for an expedited eviction process for a vacation renter who illegally holds over, creates the duties of landlord and tenants in vacation rental situations, and defines how vacation rentals are affected by mandatory evacuations. The act also amends the Residential Rental Agreements Act to expand the definition of "premises" to include all rentals not covered by the Vacation Rental Act.

Applicability. The act is applicable to landlords and their brokers who rent residential property to tenants for short-term leases of 90 days or less for vacation or recreation purposes when the tenant has another permanent residence. Excluded from coverage are hotels and motels regulated under Chapter 72, temporary rentals for business or employment purposes, and rentals for nominal consideration of the General Statutes.

Vacation Rental Agreement. The act requires that all vacation rentals be made by a vacation rental agreement. This type of rental agreement must detail how funds deposited are held and applied, what charges are nonrefundable, how the expedited eviction procedures work, and a description of the landlord's and tenant's obligations under the law. It is an unfair and deceptive trade practice for a real estate broker to fail to execute a valid vacation rental agreement and that failure makes the expedited eviction process unenforceable.

Advanced Payment/Sale of Rental Property. The act sets out how money paid in advance by tenants will be handled by the landlord or the realtor. Funds must be placed in a trust account in a North Carolina bank, and up to 50% of the total rent may be disbursed prior to occupancy. The remainder of the advance funds are to be held until occupancy, the tenant breaches, or the money is refunded. Security deposits will be governed by the Residential Tenant Security Deposit Act and may be applied to physical damage to the property, unpaid rent, or unpaid bills incurred by the tenant but charged to the landlord. If the landlord or real estate broker cannot provide the property in a fit and habitable condition or provide a reasonably comparable substitute property, the tenant must be refunded all payments collected from tenants by the landlord or the real estate broker. Finally, if the property is sold the buyer must honor any vacation rental agreements entered into by the previous owner for vacation rentals that end before 180 days after the recording of the deed transferring title.

Expedited Eviction. The act provides procedures for the expedited eviction of a tenant who holds over beyond the term of the tenant's rental, fails to pay the rent, materially breaches the agreement, or obtains the property by fraud. This process shall apply where the rental was for a period of 30 days or less. Upon 4 hours advance notice to leave the premise, the landlord may initiate an expedited eviction process. This matter must be heard by a magistrate no less than 12 hours or more than 48 hours after service of the summons and complaint on the tenant or posting on the property. If the magistrate finds that the tenant is in violation of the vacation rental agreement, the magistrate shall order the tenant to vacate within no less than two hours or no more than eight hours. A copy of the order to vacate the premises must be served on the tenant or posted on the property by a law enforcement officer. The tenant may appeal the magistrate's order by seeking a stay upon posting a bond. A landlord or real estate broker who abuses this expedited eviction process shall be guilty of a Class 1 misdemeanor and subject to a claim for unfair and deceptive trade practices.

Duties of the Landlord and Tenant. The act establishes the duties of landlords and tenants in vacation rental situations. These duties and responsibilities are similar to those in the Residential Rental Agreement Act.

Mandatory Evacuation. In the event of a mandatory evacuation, if the tenant vacates the premises the tenant will be entitled to a prorated refund of the rent unless the tenant has obtained insurance to cover the risk, or refused coverage when offered by the landlord or realtor

prior to the tenancy. Insurance offered by the landlord or realtor shall not exceed 8% of the total rent charged for the vacation rental.

The act becomes effective January 1, 2000, and applies to vacation rental agreements entered into on or after that date. (EM)

Unclaimed Property Act

S.L. 1999-460 (SB 244) revises the escheat and unclaimed property laws and adopts the Uniform Unclaimed Property Act as promulgated by the National Conference of Commissioners on Uniform State Laws. The act modifies former law in the following ways:

- Makes clear that persons employed by the State Treasurer who assist with determining the sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as any employee of the Department of the State Treasurer who provides the same service. In addition, compensation paid based on a contingency fee is limited to 12% of the final assessment.
- Consolidates presumptions of abandonment and indications of interest used to rebut these presumptions.
- Provides that gift certificates and electronic gift cards with an expiration date are deemed abandoned three years after issued, and 60% of the unredeemed portion is subject to escheat.
- Adds individual retirement accounts and other tax deferred accounts to the list of property that can be deemed abandoned.
- Amends the time period after which the following property is presumed to be abandoned if unclaimed by the owner:
  - Makes the time period for all money orders, cashier and teller checks, and certified funds uniform at seven years instead of five or ten years depending on the amount of the check.
  - Makes the time period for demand or savings deposits uniform at five years instead of five or ten years depending on the amount of the deposit.
  - Reduces the time period for money owed to a retail customer to three years down from five years.
  - Changes the time period for life insurance or annuity contract to three years from ten years.
  - Changes the time period for property distributed from a dissolved business from one year to two years.
  - Changes the time period for property held by a government entity to one year from five years.
  - Changes the time period for wages to two years from five years.
  - Changes the time period for utility deposits to one year from five years.
- Adds to the list of property not abandoned:
  - Gift certificates and electronic gift cards with no expiration date.
  - Prepaid calling cards issued by telephone companies.
  - Manufactured home buyer's deposits the manufactured home dealer is authorized to retain.
  - Certain credit balances between business associations.
- Consolidates the criteria for determining whether property is considered abandoned in North Carolina and subject to escheat in this State versus other states.
- Adds a $10.00 filing fee when filing an extension of time to file an unclaimed property report.
- Imposes a five-year statute of limitation on the Treasurer to bring an action to enforce the law where the holder has filed a required report of abandoned property.

- Permits the Treasurer to provide precompliance reviews of holders compliance programs when requested by holders.
- Increases the civil penalties the Treasurer may impose for noncompliance with the law.
- Changes the interest rate charged on reportable property not reported or delivered to the Treasurer from a current rate of 12% per annum to a rate set by the Treasurer consistent with current market conditions, to be not less than 5% and not more than 16% per year.
- Increases the civil penalty for failing to report or deliver reportable property, or for fraudulently reporting. The previous penalty was $300 per failure plus $10 per day or 50% of the amount or value owed, whichever is greater. The new penalty is $1,000 per day, up to a maximum of $25,000, plus 25% of the amount or value owed.
- Requires a person who agrees to try to locate abandoned property for a fee to register with the Treasurer annually and pay a $100 per year registration fee.

The act becomes effective January 1, 2000, and applies to property existing on or after that date. (WR)

Trusts

Appointment of Successor Trustees

S.L. 1999-118 (HB 201) amends two sections in Chapter 36A (Trusts and Trustees). The first, G.S. 36A-25, deals with the resignation of a trustee and appointment of a successor. The second, G.S. 36A-33 deals with the appointment of a successor trustee after the death or incapacity of an existing trustee. The administrative activities covered under G.S. 36A-25 and G.S. 36A-33 are conducted in special proceedings. Both G.S. 36A-25 and G.S. 36A-33 contain provisions that allow trust beneficiaries who live out-of-state to be served by publication. Similar blanket authorizations for service by publication have been held unconstitutional and this act deletes the questionable provisions. Service under these sections will now be according to the Rules of Civil Procedure (found in G.S. 1A-1).

The act became effective May 28, 1999. (EM)

Division of Trusts

S.L. 1999-144 (SB 1060) grants to trustees the authority to create a separate identical trust from any addition or contribution to an existing trust. It also authorizes a trustee to create two or more separate, nonidentical trusts, if: the new trusts are not inconsistent with the terms of the governing instrument; and the new trusts provide in the aggregate for the same succession of interests and beneficiaries as in the original trust. In addition, the trustee must fund the new trusts in one of the following ways: by pro rata allocation of the assets in the original trusts based on the fair market value of the assets at the date of division; or in a manner that fairly reflects the net appreciation or depreciation of the trust assets measured from the date of valuation to the date of division.

The act became effective October 1, 1999. (RZ)

Uniform Prudent Investor Act

S.L. 1999-215 (SB 178) adopts the Uniform Prudent Investor Act as a new prudent investor standard applicable to trustees of express trusts, including charitable, inter vivos, and testamentary trusts. The act also specifies which trusts and trust relationships the act does not

apply to. Under this new rule, the trustee has greater investment discretion. Also, this new definition of the "prudent person" rule is made applicable to the overall investment of trust assets and not limited to individual investments. The tradeoff between risk and return is considered a central factor in investment decisions. All categorical restrictions on types of investments are eliminated and diversity is required for prudent investing. This standard is considered the "default" which will apply to existing and future trusts, unless the instrument creating the trust expressly provides otherwise. The act imposes on the trustee a general duty to avoid personal conflicts of interest and to treat all beneficiaries impartially. The act also authorizes the trustee to delegate the investment and management functions to an agent when it is prudent to do so. However, the trustee must review the agent's actions. Trustees with special skills must use those skills for the benefit of the trust.

The act becomes effective January 1, 2000, and applies to trusts existing on that date as well as trusts created after that date. For trusts created prior to January 1, 2000, the act only applies to actions or omissions occurring after January 1, 2000. (WR)

Modification and Termination of Irrevocable Trusts

S.L. 1999-266 (SB 526) repeals Article 11 of Chapter 36A of the General Statutes and replaces it with Article 11A entitled "Modification and Termination of Irrevocable Trusts." The new article provides for the modification or termination of a noncharitable irrevocable trust in the following instances:

- Where the settler is not legally incapacitated and is the sole beneficiary of an irrevocable trust – the settlor may compel modification and termination without approval of the court regardless of whether the purpose of the trust has been accomplished.
- Where neither the settlor nor any of the beneficiaries is legally incapacitated – they may compel modification or termination without approval of the court regardless of whether the purpose of trust has been accomplished. If any beneficiary fails to consent, other beneficiaries may institute a proceeding to compel.
- Where all beneficiaries consent – they may compel modification and termination in a proceeding in superior court. If continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified unless the court determines that the reasons for modification or termination outweigh the interest in accomplishing the material purpose of the trust.
- In the case of a small trust – in a proceeding in superior court, the court may modify or terminate upon determination that the fair market value of the trust assets is so low that continuance would defeat or impair trust purposes. If the trustee determines that the fair market value of the trust is $50,000 or less and continuance of the trust in relation to the cost of administration would defeat or impair the purpose of the trust, the trustee may terminate the trust and distribute the trust property to the beneficiaries.
- In the case of changed circumstances – in a proceeding in superior court, the court may modify or terminate a trust if the trust has been fulfilled or has become illegal or impossible to fulfill, or due to circumstances not known to the settlor and not anticipated by the settlor, continuation of the trust under its terms would defeat or impair trust purposes.

The act provides that the consent of a beneficiary who is under a legal incapacity may be given by a guardian ad litem. It provides for distribution of trust property to minors or incompetents by way of the guardian of the estate or general guardian of the beneficiary or in accordance with the North Carolina Uniform Transfer to Minors Act or the North Carolina Custodial Trust Act.

Proceedings under the new Modification and Termination of Trust provisions may be brought under the Uniform Declaratory Judgment Act.

The act becomes effective January 1, 2000, and applies to all trusts created before or after that date. As is now the case, provisions regarding modification and termination of small trusts shall not apply to certain trusts created before October 1,1991. (EM)

Estates

Personal Representative Qualifications

S.L. 1999-133 (SB 525) amends G.S. 28A-4-2 (persons disqualified as personal representative) by eliminating a provision stating that a person who is an alien disqualified by law may not serve as a personal representative in the administration of an estate. By eliminating the provision, the status of an alien will not automatically disqualify someone from serving as a personal representative. The person will still have to meet all other qualifications and the Clerk of Superior Court can disqualify a person who the clerk "finds otherwise unsuitable." In addition, any personal representative who is not a resident of the State must appoint someone authorized to receive legal process on that person's behalf.

The act becomes effective January 1, 2000, and applies to the estates of individuals who die on or after that date. (SR)

New Lapse Statute

S.L. 1999-145 (SB 329) changes the current anti-lapse statute that mandates that the issue of a deceased devisee or otherwise disqualified devisee can take property in place of the deceased or disqualified devisee if the issue would have otherwise taken under the intestacy statute. The act allows the issue of the predeceased devisee to take in place of the predeceased devisee if the predeceased devisee is a grandparent or a descendant of a grandparent of the testator.

The act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date. (EM)

Decedents' Estates/Funeral Expenses

S.L. 1999-166 (SB 871) amends the law governing the obligation of a decedent's estate for the decedent's funeral expenses. The act provides that any person authorized by law to dispose of a decedent's body can bind the decedent's estate for funeral expenses and related charges, including the execution and delivery on behalf of the estate of any agreements, promissory notes, and other instruments relating to the estate. Funeral expenses for which the estate is primarily liable include interest or finance charges on those expenses that were financed by a funeral establishment or third party creditor. The estate is obligated for payment of the expenses to the funeral establishment, the third party creditor, or to any other person authorized to dispose of the body who incurred such expenses. The estate can be bound for the payment of funeral expenses regardless of whether the personal representative of the estate has been appointed at the time the expenses are incurred. The act specifies that nothing in the act affects current law that provides that funeral expenses of up to $2,500 are second on the list of priorities for claims against the estate.

The act became effective October 1, 1999. (WR)

Gifts by Guardians

S.L. 1999-270 (SB 1003) amends the laws relating to guardianship of incompetents by authorizing guardians to make gifts to individuals, including the guardian, under the same

circumstances as currently apply to charitable gifts. The guardian must obtain the court's approval before making the gift. The act allows gifts to be made to beneficiaries under the incompetent's will, if a will was executed prior to incompetency; to intestate beneficiaries; and to the incompetent's spouse, parent or descendent, so long as the amount of the gift does not exceed the annual gift tax exclusion, which is currently $10,000.

The act became effective October 1, 1999. (KCB)

Slayer/Forfeiture of Property Rights

S.L. 1999-296 (SB 176) amends the law that prevents a person who unlawfully kills another from taking under the victim's estate by eliminating the possibility that the heirs of the slayer could receive a greater share of the estate as a result of the unlawful killing than the heirs would have received in the event of a natural death. The act changes the slayer statute to provide that when a decedent dies intestate, the slayer's surviving issue take per stirpes not per capita. The act also provides that where the decedent dies with a will, the estate passes in accordance with the anti-lapse statute despite the fact the slayer is still alive.

The act became effective October 1, 1999, and applies to estates of decedents dying on or after that date. (WR)

Clarify Attorney-in-Fact Gifts

S.L. 1999-385 (HB 604) provides that an attorney-in-fact may make gifts to himself or herself when gifts to the attorney-in-fact are expressly authorized in the State's statutory short form for the power of attorney. The act also allows an attorney-in-fact to make gifts to him or her when the gifts are in keeping with the principal's personal history of making or joining in lifetime gifts.

The act became effective October 1, 1999, and applies to all powers of attorney executed on or after that date. (ER)

Major Pending Legislation

Securities Transfer on Death

HB 112 would enact the Uniform Transfer on Death Securities Registration Act to allow owners of securities to register their title to securities in transfer-on-death form. This would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. Title to the securities would be transferred as a matter of contract, not as a testamentary bequest, and would not be part of the probate estate. This bill is a recommendation of the General Statutes Commission and is modeled after the Uniform Act. The Uniform Act has been adopted in at least 44 other states. House Bill 112 is currently pending in the Senate Finance Committee. (WR)

Modify Rights of Decedent's Spouse

HB 979 repeals the current dissent statute which guarantees a surviving spouse a minimum share of a decedent's spouse estate and replaces it with an elective share statute. The elective share statute would provide the surviving spouse with rights in the decedent's non-probate property. The current statute only gives rights in the decedent's probate property. The bill also revises the procedure for determining the surviving spouse's minimum share. HB 979 is currently pending in the Senate Judiciary II Committee. (TH)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. 2.1(12) (HB 163, Sec. 2.1(12)) authorizes the Legislative Research Commission to study the transfer of development-rights, the creation of development-rights banks, and ways to improve the quality of documents recorded in the office of the register of deeds.

This section became effective July 1, 1999. (RZ)

Chapter 14 Resolutions

Joint Resolutions

Inviting the Governor

Res. 1999-01 (SJR 11)

Honor North Carolina Bar Association

Res. 1999-02 (SJR 53)

Confirm Robert Koger

Res. 1999-03 (SJR 32)

Honor Terry Sanford

Res. 1999-04 (SJR 403)

Confirm Lingerfelt Appointment

Res. 1999-05 (SJR 78)

Inviting Chief Justice Mitchell

Res. 1999-06 (SJR 913)

Honor Samuel Ashe

Res. 1999-07 (SJR 416)

Confirm Ervin

Res. 1999-08 (SJR 975)

Community College Board Election

Res. 1999-09 (SJR 795)

Honor Edmund Strudwick

Res. 1999-10 (HJR 1068)

Kenneth Williams Memorial

Res. 1999-11 (HJR 1251)

Honoring Wade B. Matheny

Res. 1999-12 (SJR 464)

Honor L.W. Locke

Res. 1999-13 (HJR 150)

Honoring John Reed

Res. 1999-14 (HJR 76)

State Board of Education Confirmation – 2

Res. 1999-15 (SJR 470)

Commemorate Juneteenth

Res. 1999-16 (HJR 1486)

State Board of Education Confirmation

Res. 1999-17 (SJR 469)

Nature & Historic Preserve

Res. 1999-18 (SJR 1139). See **Environment and Natural Resources.**

Honoring Memory Dr. Denison Olmsted

Res. 1999-19 (SJR 1169)

Honoring George Washington/Bicentennial

Res. 1999-20 (SJR 1171)

Honoring H.D. Mabe, Jr.

Res. 1999-21 (HJR 1488)

Adjournment Resolution

Res. 1999-22 (HJR 1489)

Simple Resolutions

1999 Senate Permanent Rules

(SR 1)

Honoring Scotland County

(SR 42)

Elect University of North Carolina Board of Governors

(SR 68)

Honoring Noah Gibson – 2

(SR 168)

Honoring Wrightsville Beach

(SR 327)

Honoring Lattimore

(SR 750)

Commend Alamance County

(SR 763)

Honor Surf City

(SR 1038)

Honor Town of Shallotte 100th Anniversary

(SR 1170)

Honoring James Iredell

(SR 1173)

Honor Benson's Mule Day/50th Anniversary

(SR 1175)

1999 House Temporary Rules

(HR 1)

Honoring Scotland County

(HR 9)

Permanent House Rules

(HR 51)

Honoring Noah Gibson

(HR 115)

University of North Carolina Board of Governors Election Procedure

(HR 166)

Honor Shallotte

(HR 325)

Encourage UN Resolution/Eliminate Discrimination

(HR 388)

Honoring Richard C. Hoffman

(HR 451)

Designate Children's Day

(HR 752)

Joshua Wright Memorial

(HR 1140)

Honor Mt. Gilead

(HR 1320)

Honor Alamance County

(HR 1321)

James Iredell Honored

(HR 1487)

Chapter 15
Senior Citizens

John Young (JY)

Enacted Legislation
Institutional Services

Adult Care Home Licensure

S.L. 1999-113 (SB 198) prohibits the Department of Health and Human Services (DHHS), Division of Facility Services from issuing a new adult care home license to an applicant who was the owner, principal, or affiliate whose license had been revoked, summarily suspended, or downgraded to a provisional license within the past year, or who was assessed a penalty for an A or B violation within the past year. If a correction plan is implemented and DHHS certifies that the penalty has been corrected, then DHHS may issue a license before one year elapses.

The act became effective May 28, 1999, and applies to license applications filed on or after that date. (JY)

Extend Adult Care Home Bed Moratorium

S.L. 1999-135 (HB 944) extends to September 30, 2000 a moratorium on the approval of additional adult care home beds. This act extends the moratorium with the following exceptions: (1) plans submitted for approval prior to May 18, 1997; (2) plans submitted after May 18, 1997, if the plan demonstrates that on or before August 25, 1997, certain binding agreements were entered into for establishing or expanding the facility; (3) beds in facilities for the developmentally disabled with six beds or less; (4) counties where the vacancy rate of available adult care homes beds is 15% or less of the total number of available beds in the county as of August 26, 1997 and where no new beds have been approved or licensed in the county or submitted for approval; or (5) if the county commissioners determine that there is a substantial need in the county.

The act became effective June 8, 1999. (JY)

Taxation of Continuing Care Retirement Homes

S.L. 1999-191 (SB 325). See **Taxation**.

Adult Care Home/Licensure Exemption

S.L. 1999-193 (HB 96) restores, and applies retroactively, the exemption from licensing standards for certain adult care homes maintained or operated by a unit of government. The exemption will apply to only one facility that is located in Beaufort County.

The act became effective on and after September 30, 1995. (JY)

Nursing Home Administrators Board Fees

S.L. 1999-217 (SB 622) makes changes to the fees collected under the Nursing Home Administrators Board (Board) Act:

- Requires the applicant for an examination administered by the Board to pay a fee not to exceed $100, plus the actual costs of the exam.
- Reduces the time, from five years to four years, that a licensed nursing home administrator may have his or her name placed on the Board's inactive list and raises the yearly fee for this service from $25 to $50.
- Increases the temporary license fee from $100 to $200.
- Sets an annual fee not to exceed $2000 for certifying a course provider in lieu of individual courses.

The act became effective October 1, 1999. (JY)

Waiver of Certain Rules for Certain Licensed Health Care Facilities during Disasters

S.L. 1999-307 (SB 34) allows the temporary waiver of administrative rules to the extent necessary to allow certain licensed health care facilities to provide temporary shelter or services during a disaster. Current law does not allow nursing homes, adult care homes, or home care agencies to operate outside of the rules of the various commissions that regulate these facilities even under emergency situations, except by a specific suspension of the rules by the Governor, with the approval of the Council of State. The act allows these rules to be waived unless the Division of Facility Services determines that the placement or services would pose an unreasonable risk to the health, safety, or welfare of any person in the facility. The rule waivers are automatic upon an emergency being declared where the waiver has been pre-approved as part of a pre-disaster plan. The rule waiver may also be made on a case-by-case basis during a disaster for any rules whose waivers have not been pre-approved.

The act became effective July 1, 1999, and applies to shelter or services provided on and after that date. (JY)

Long-Term Care Safety Initiative

S.L. 1999-334 (SB 10), as amended by S.L. 1999-456, Sec. 61 (HB 162, Sec. 61) makes a number of changes related to long-term care facilities. Any provision of this act, for which a specific effective date is not mentioned, became effective July 22, 1999. (JY)

I. Substantive Provisions for Resident Safety

Medical Care Commission Rules. The Medical Care Commission shall adopt rules for adult care homes to establish minimum medication administration standards, establish training requirements for staff, establish minimum training and education qualifications for supervisors, specify qualifications of staff for each shift based on varied needs and population mix, implement due process and appeals rights for transfer and discharge of residents, establish procedures for determining the compliance history of adult care homes, establish standards for special care units and disclosure of special services offered for Alzheimer's and other dementia, and establish requirements for granting extensions for provisional licenses. The Secretary of the Department of Health and Human Services (DHHS) may adopt temporary rules to implement these requirements.

License Requirement for Special Care Units. Facilities that publicize a "special care unit" must be licensed as such. Under current law, adult care homes that advertise as providing a unit for Alzheimer's or dementia patients, or other mental health disabilities, are not regulated regarding whether those units provide better or different care from the care that is provided elsewhere in the facility.

Adult Care Home Specialist Fund. The act establishes an Adult Care Home Specialist Fund in DHHS. The fund will be maintained by DHHS and used to pay the salaries of adult care home specialists. No fees are authorized.

Compliance History Review. Current licensing law for adult care homes is amended to require DHHS, when renewing an existing license, to conduct a compliance history review of the licensee. DHHS may refuse to renew a license when the review shows a pattern of noncompliance with State law or otherwise demonstrates a disregard for the health, safety, and welfare of residents. The compliance history review pertains not only to the current facility, but also other facilities owned or operated by the licensee.

Transfer or Discharge of Residents. This provision grants to residents the right not to be transferred or discharged except for specified reasons. The facility must give residents 30 days advance notice of any transfer or discharge. Residents have a right to appeal a facility's attempt to transfer or discharge, and may remain in the facility pending the resolution of an appeal.

Time Limit on a Provisional License. The licensing statute is amended to limit a provisional license to 90 days or less, but allows one additional 90 day extension if DHHS finds that the licensee has made substantial progress toward remedying the licensure deficiencies.

Minimum Complaint Response Times. The act establishes a framework for minimum complaint response times for Adult Care Home Resident's Bill of Rights violations. An investigation must commence immediately if the complaint alleges a life-threatening situation; within 24 hours if the complaint alleges abuse or neglect; and within 48 hours if the complaint alleges neglect. An investigation must be completed within 30 days. These response time requirements apply to adult care homes and nursing homes.

Temporary Management of Nursing Homes and Adult Care Homes. This provision amends the current law pertaining to temporary management of nursing homes and adult care homes and allows DHHS to file a petition for emergency intervention. This would allow the court to appoint an emergency temporary manager to serve until a hearing is conducted. The court must schedule a hearing within three days of the DHHS petition. The grounds for temporary management are amended to include a facility's pattern of failure to comply with the law.

Temporary Management Contingency Fund. Current law provides that the contingency fund is funded from penalties collected under nursing home and adult care home penalty statutes. This language is repealed because the North Carolina constitution provides that all fines must go to the public schools. However, the provision allows DHHS to maintain this fund without the funding from penalties.

Adult Care Home Resident Assessment. This provision requires that facilities complete an assessment on each resident within 72 hours of admission. The assessment shall be used to develop appropriate and comprehensive service plans and care plans and to determine staff needs. The assessment shall include the resident's cognitive status and physical functioning in the activities of daily living, but shall not serve as the basis for medical care. The assessment shall indicate if the resident requires referral to a physician or other appropriate licensed health care professionals or community resources for medical care. DHHS shall ensure that the assessment is completed on an instrument approved by the Secretary of Health and Human Services. DHHS shall provide ongoing training in the use of the instrument. As part of the licensing and inspection process, DHHS shall review assessments and related service plans and care plans for a selected number of residents.

II. Adult Care Home Disclosure Requirements.

Adult care homes and adult day care programs offering special care to persons with Alzheimer's disease or other dementia, a mental health disability, or other special needs diseases or conditions must disclose to DHHS certain information about the distinguishing characteristics of

the special program. The written disclosure must also be provided to the person seeking placement, and to the State Long-Term Care Ombudsman.

III. Miscellaneous and Conforming Provisions

Cost Reports for Family Care Homes. Effective July 1, 1999, the requirement that family care homes file with DHHS annual cost reports is repealed.

Family Care Home Rates. Reimbursement rates for family care homes shall be based on market rate data rather than cost reporting data.

Adult Care Home Rule-Making Authority. The act transfers from the Social Services Commission to the Medical Care Commission the rule-making authority for adult care homes. The Secretary of DHHS is required to adopt temporary rules by September 22, 1999. The Secretary's authority to adopt temporary rules to implement these provisions expires on the date that the Medical Care Commission adopts permanent rules.

Compliance History of Facilities. DHHS must establish and maintain a provider file to record and monitor compliance histories of facilities, owners, operators, and affiliates. This provision applies to nursing homes and adult care homes.

Repeal of Conflicting Statute Pertaining to Alzheimer's Units. The act repeals a section of the General Statutes pertaining to standards for Alzheimer's Units in adult care homes (special care units). The Department of Health and Human Services has never adopted these standards. Since the current statute has a definition of "special care unit" that is different from the one in the act, Part 14E of Article 3 of Chapter 143B of the General Statutes is repealed.

Studies. There are seven required studies. (Listed below in Senior Citizens Studies)

Patient Abuse and Neglect; Punishments. This section adds a new penalty to the existing statutory punishments for abuse and neglect in a health care facility or a residential care facility. (JY)

Assisted Living Administrators

S.L. 1999-443 (HB 512) requires the Department of Health and Human Services (DHHS) to certify certain assisted living residence administrators. The qualifications for an administrator are:

- The applicant must be at least 21 years of age.
- Provision of a satisfactory criminal background report.
- Successful completion of at least two years of coursework at an accredited college or university.
- Successful completion of a department approved administrator-in-training program of at least 120 hours.
- Successful completion of a written exam.

DHHS may refuse to issue or renew a certificate and may amend, recall, suspend, or revoke an existing certificate upon a determination that there has been substantial failure to comply with the Article or the rules. The holder of the certificate shall report any incidents of suspected abuse, neglect, or exploitation to the Health Care Personnel Registry.

The certification requirements do not apply to administrators in:

- Facilities that have both nursing home beds and assisted living beds.
- Hospitals with assisted living beds.
- Family care homes.
- Continuing care facilities.

Prior to December 31, 1999, DHHS must grant a certificate to practice as an assisted living administrator to a person who has been actively engaged as an administrator for at least one year.

The act becomes effective January 1, 2000. (JY)

Programs and Services for Senior Citizens

Aging Study Commission/Membership

S.L. 1999-76 (SB 40) increases from six to eight the number of non-commission members on special subject subcommittees of the North Carolina Study Commission on Aging.

The act became effective May 21, 1999. (JY)

Prescription Drug Assistance Program

S.L. 1999-237, Sec 11.1(b) (HB 168, Sec. 11.1(b)) directs the Department of Health and Human Services (DHHS) to work with the Fiscal Research Division of the Legislative Services office to develop a proposal for the establishment of a prescription drug assistance program. DHHS shall report on the proposal to the General Assembly no later than May 1, 2000.

This section became effective July 1, 1999. (JY)

Long-Term Care Continuum of Care

S.L. 1999-237, Sec. 11.7A (HB 168, Sec. 11.7A) directs the Department of Health and Human Services (DHHS), in cooperation with other appropriate State and local agencies and representatives of consumer and provider organizations, to develop a system that provides a continuum of long-term care for elderly and disabled individuals and their families. Prior to and during implementation of the system, DHHS shall pursue strategies to provide alternative financing of long-term care services promoting public/private partnerships and personal responsibility for long-term care. Not later than April 15, 2000, DHHS shall submit a progress report to the General Assembly on the development of the system and whether a single division of DHHS is the appropriate organizational structure for coordination of all long-term care in North Carolina.

This section became effective July 1, 1999. (JY)

Studies
Referrals to Existing Commissions/Committees

Study Homestead Exemption

S.L. 1999-237, Sec. 6.2 (HB 168, Sec. 6.2). See **Taxation.**

North Carolina Study Commission on Aging Studies

S.L. 1999-334, Sec. 3.13 (SB 10, Sec. 3.13) requires the North Carolina Study Commission on Aging to study the following topics:

- Establishment of a licensing fee as a source of revenue for monitoring, staffing, and temporary management of adult care homes.
- The need for licensure of adult care home administrators, separate from the licensure of adult care facilities.
- The lack of uniformity, accountability and central authority in the current regulatory system for adult care homes.
- Problems that arise when adult care homes admit persons whose behavior poses a threat to the safety and well-being of other residents.

The Commission shall report its findings and recommendations to the General Assembly on or before May 1, 2000.

This section became effective July 22, 1999. (JY)

Mental Health Study Commission Study

S.L. 1999-334, Sec. 3.13A (SB 10, Sec. 3.13A) requires the Mental Health Study Commission to study issues related to the appropriate placement of persons with mental health disabilities in adult care homes. The Commission shall report its findings and recommendations to the 1999 General Assembly, Regular Session 2000, but not later than May 1, 2000.

This section became effective July 22, 1999. (JY)

The Joint Legislative Health Care Oversight Committee

S.L. 1999-334, Sec. 3.14 (SB 10, Sec. 3.14) requires the Joint Legislative Health Care Oversight Committee to study whether the Health Care Personnel Registry is working effectively. The Committee shall recommend any changes and report its findings to the General Assembly on or before May 1, 2000.

This section became effective July 22, 1999. (JY)

Study Commission on Aging Studies

S.L. 1999-395, Part VII (HB 163, Part VII) directs the North Carolina Study Commission on Aging to study the issue of annual immunization of residents and employees of nursing homes, adult care homes, and adult day care homes against influenza. It shall study the issue of immunization of residents every five years against pneumococcal disease. The Commission must also study the rationale and appropriateness of present cost sharing of nonfederal costs of Medicaid services for all State-County Special Assistance. The Commission shall report its findings and recommendations to the 1999 General Assembly, Regular Session 2000, but not later than May 1, 2000.

This section became effective August 5, 1999. (JY)

Referrals to Departments, Agencies, Etc.

Plan for Accreditation of Adult Care Homes and Assisted Living Facilities

S.L. 1999-237, Sec 11.20 (HB 168, Sec. 11.20) requires the Department of Health and Human Services (DHHS) to study and develop a plan and criteria for accreditation of adult care homes and assisted living facilities. The plan shall provide for enhanced payments to adult care homes and assisted living facilities that meet accreditation criteria. DHHS shall report to the Joint Legislative Health Care Oversight Committee and to the North Carolina Study Commission on Aging no later than April 1, 2000.

This section became effective July 1, 1999. (JY)

More Efficient System of Regulatory Administration for Adult Care Homes

S.L. 1999-334, Sec. 3.12 (SB 10, Sec. 3.12) requires the Department of Health and Human Resources (DHHS) to recommend to the North Carolina Study Commission on Aging a

more efficient system of regulatory administration for adult care homes that delineates clear authority and streamlines governmental functions. DHHS shall report to the Study Commission on Aging on or before February 1, 2000, and the Study Commission shall review the DHHS recommendations and shall make recommendations to the General Assembly on or before May 1, 2000.

This section became effective July 22, 1999. (JY)

Chapter 16
State Government

Brenda Carter (BC), Giles Perry (GSP),
Barbara Riley (BR), Ebher Rossi (ER)

Enacted Legislation
ABC Laws

ABC Law Changes

S.L. 1999-456, Sec. 10 (HB 162, Sec. 10) amends the law regarding mixed beverage elections to allow businesses in a town that has approved the sale of mixed beverages to obtain a purchase-transportation permit to purchase alcoholic beverages from an Alcoholic Beverage Control (ABC) store located elsewhere in the county. Previously, if a city held a mixed beverage election and an ABC store election at the same time and the voters did not approve the establishment of an ABC store, the Commission could not issue mixed beverage permits in that city even though issuance of those permits has been approved by the voters.

This section became effective August 13, 1999. (BR)

Statewide Tourism Resort Permits

S.L. 1999-461 (SB 17) authorizes the Alcoholic Beverage Control Commission to issue permits to "tourism resorts" on a statewide basis without a referendum.

The act became effective August 5, 1999. (GSP)

ABC Permit Modifications

S.L. 1999-462 (SB 607) authorizes the Alcoholic Beverage Control (ABC Commission) to issue retail permits to "Historic ABC establishments" and "National Historic Landmark Districts" and makes various other modifications to the ABC Commission's authority to issue permits. The act also makes it unlawful for any permittee to refuse to sell alcoholic beverages to a person solely based on the person's race, religion, color, national origin, sex, or disability.

The act grants to the ABC Commission the authority to issue the following permits to historic ABC establishments without approval at an election: on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverage permits. A historic ABC establishment is defined as a restaurant or hotel which is on the National Register of Historic Places and is designed to attract tourists, and which is located within specified distances of a State scenic byway and national scenic highway.

The act allows the ABC Commission to issue mixed beverage permits without approval at an election to restaurants and hotels located in areas federally designated as national historic landmark districts. The permits may be issued to qualifying establishments located in certain counties with a population of at least 150,000.

The act authorizes the issuance of permits to sports clubs in counties bordering the Atlantic Ocean when the on and off-premises sale of malt beverages and unfortified wine, the sale of mixed beverages and the operation of an ABC system has been allowed in at least eight cities in the county. A sports club is an establishment substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both, with gross receipts for club activities (including food) that exceed gross receipts for alcoholic beverages.

The act expands the definition of a recreation district to include an area of at least 150 acres that offers lodging, retail outlets, meeting facilities, restaurants, a white water rafting facility, or other recreation activities. The act authorizes the ABC Commission to issue permits for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages to qualified businesses within the prescribed areas.

The act permits the issuance of ABC permits in designated special ABC areas in Macon County by removing Macon from a list of exempt counties.

The act expands the issuance of permits in Interstate Interchange Economic Development Zones. The ABC Commission is authorized to issue on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits and mixed beverages permits to qualified hotels, restaurants, and sports clubs. In any county that qualifies for the issuance of permits to residential private clubs and sports clubs, the Commission is authorized to issue off-premises malt beverage permits and off-premises unfortified wine permits. The permits may be issued without voter approval to establishments that are located within one mile of any interstate highway interchange or within one mile of a residential private club or sports club holding a specified ABC permit. The ABC Commission is also authorized to issue mixed beverages permits, without approval at an election, to hotels, restaurants and sports clubs located within one mile of an interstate highway interchange in a qualifying county.

The act expands the definition of a tourism ABC establishment to include restaurants or hotels located between the State line and Milepost 460 *(previously applicable only between Milepost 305 and 460)*, and which are located in a county in which the on or the off-premises sale of malt beverages or unfortified wine is authorized in at least one city. The ABC Commission has authority to issue on-premises malt beverage permits and on-premises unfortified wine permits for tourism ABC establishment without approval at an election.

The act also expands the issuance of permits to residential private clubs and sports clubs to include any qualifying establishments that have an 18-hole golf course and are adjacent to a coastal sound and meet other statutory requirements. The permits may be issued without approval at an election.

The act became effective August 21, 1999. (BC)

Boards and Commissions

Roanoke Island Historical Association

S.L. 1999-32 (HB 652) adds the Superintendent of Public Instruction and the Chair of the Dare County Board of Commissioners to the membership of the board of directors of the Roanoke Island Historical Association. The act also allows the ex officio members to name a designee to serve in their place.

The act became effective May 7, 1999. (BR)

Future of Electric Service/Members

S.L. 1999-122 (HB 778) increases the membership of the Study Commission of the Future of Electric Service in North Carolina from 23 to 29 members.

The act became effective May 28, 1999. (GSP)

Butner Community Governance

S.L. 1999-140 (HB 105) repeals Part 1 of Article 6 of Chapter 122C of the General Statutes which created the Butner Planning Council and reestablishes an elective body, the Butner Advisory Council (Council).

The Butner Advisory Council will be elected by the residents of the Butner territorial district. The election will be nonpartisan and held on a date set by the Granville County Board of Elections after clearance from the federal Department of Justice. The Council will continue to consist of seven members. The Council continues to be only advisory in nature.

Council's powers and duties include advising the Secretary of Health and Human Services by resolution on the operations of Butner and submitting the names of candidates for the position of Butner Town Manager to the Secretary.

The act continues the Study Commission on the Transfer of Butner Public Safety until December 31, 2001. (The Study Commission is charged with examining the transfer of the responsibility for Butner Public Safety from the Department of Crime Control and Public Safety to other State or local entities; determining the most appropriate way to meets the needs of State institutions and residents that would be affected by a transfer; and determining the most cost effective means of accomplishing a transfer.)

Those sections of the act dealing with the election of the council and the establishment of a special fund for the Butner Public Safety Division became effective June 4, 1999. The sections of the act repealing the existing council and making conforming changes are effective when a majority of the members of the council are elected and qualified. (BR)

Tenants on Housing Authority

S.L. 1999-146 (HB 951) increases, from nine to 11, the maximum number of commissioners that may be appointed to a housing authority board and amends the laws relating to tenant representation on housing authority boards to bring those laws into compliance with federal law. Federal compliance is accomplished by:

- Requiring that at least one commissioner on the housing authority board be directly assisted by the housing authority.
- Providing an exemption from the tenant /commissioner requirement where:
  - The authority operates less than 300 units.
  - The authority has provided the resident advisory board with reasonable notice that an opportunity exists for a tenant to serve as a commissioner.
  - The authority has not been notified by the resident advisory board, within a reasonable time, that a tenant wishes to serve as a commissioner.

The act became effective June 4, 1999. (ER)

Repeal Statutory Reporting Requirements for Regional Economic Development Commissions

S.L. 1999-237, Sec. 16.5 (HB 168, Sec. 16.5). See **Local Government**.

Modify Northeast Regional Economic Development Commission

S.L. 1999-237, Sec. 16.6 (HB 168, Sec. 16.6). See **Local Government**.

Create Commission to Address Smart Growth, Growth Management, and Development Issues

S.L. 1999-237, Sec. 16.7 (HB 168, Sec. 16.7). See **Local Government**.

Ports Railway Commission Business Plan

S.L. 1999-237, Sec. 16.39 (HB 168, Sec. 16.39) requires the North Carolina Ports Railway Commission (Railway Commission) to develop a business plan in consultation with the North Carolina State Ports Authority (Ports Authority). The plan shall be designed to foster the efficient and effective operation of the Ports Authority and promote the effective development of the State ports by better serving those who depend upon reliable rail service in conducting their business at the ports.

The Ports Railway Commission shall provide the business plan to the Ports Authority and to the Joint Legislative Commission on Governmental Operations by October 1, 1999, and shall report quarterly to those bodies on the implementation of the plan.

This section became effective July 1, 1999. (BR)

Technical Changes to Boxing Commission Law

S.L. 1999-237, Sec. 20.3 (HB 168, Sec. 20.3) requires the Executive Director of the Boxing Commission to enforce the State Boxing laws through the Department of Crime Control and Public Safety, and clarifies the contractual obligations boxing promoter surety bonds must cover.

This section became effective July 1, 1999. (GSP)

Travel Allowance for Members of the Utilities Commission

S.L. 1999-237, Sec. 28.21 (HB 168, Sec. 28.21) provides a weekly travel allowance for Utility Commission members who live more than 50 miles from Raleigh. Other members are reimbursed under the general provisions of G. S. 138-6 (a) governing travel allowances for State officers and employees.

This section became effective July 1, 1999. (GSP)

General Contractors Property

S.L. 1999-349 (SB 796) permits the State Licensing Board for General Contractors (Board) to own and encumber real property subject to the approval of the Governor and the Council of State. This legislation also gives the Board the ability to purchase or rent equipment, as well as the ability to purchase insurance.

The act became effective July 22, 1999. (ER)

Southeast Compact Commission

S.L. 1999-357 (SB 247). See **Environment**.

State Judicial Council/Funds

S.L. 1999-390 (HB 1222) creates the State Judicial Council (Council) to be composed of representatives of the courts, attorneys, and the public. The Council will advise the Chief Justice of the Supreme Court on funding priorities, judicial salaries, the creation of judgeships, and matters concerning the operation of the courts. Other specific duties of the Council include the following:

- Recommend performance standards for the courts and judicial officials.
- Recommend guidelines for case management including pretrial and posttrial alternative dispute resolution.

- Monitor and evaluate the use of alternative dispute resolution.
- Recommend changes in district or division boundaries.
- Other functions as needed to monitor the administration of justice and judicial effectiveness in serving the public.

The act becomes effective January 1, 2000. (GSP)

North Carolina Government Competition Act Repealed

S.L. 1999-395, Sec. 18.1 (HB 163, Sec. 18.1) repeals Article 74 of Chapter 143 of the General Statutes, The North Carolina Government Competition Act (Act). The Act authorized the creation of the North Carolina Government Competition Commission to act as a catalyst for the use of competition to improve the delivery of State government services, reduce costs, and make State government more efficient.

This section became effective July 1, 1999. (BR)

Housing Authority Exemption

S.L. 1999-409 (HB 438) exempts housing authorities from the real estate licensure statutes.

The act became effective July 21, 1999. (GSP)

Roanoke Island Historical Association

S.L. 1999-431, Sec. 3.1 (SB 437, Sec. 3.1) amends G.S. 143-200 to provide that the members of the Roanoke Island Historical Association, except for ex officio members, shall serve three-year terms.

This section became effective August 9, 1999. (BR)

First Flight Centennial Commission

S.L. 1999-431, Sec. 3.2 (SB 437, Sec. 3.2) increases the membership on the First Flight Centennial Commission from 26 to 28 members. Of the two new members, one shall be appointed by the President Pro Tempore of the Senate and one by the Speaker of the House of Representatives.

This section became effective August 9, 1999. (BR)

North Carolina Real Estate Commission

S.L. 1999-431, Sec. 3.4 (SB 437, Sec. 3.4) adds two members to the North Carolina Real Estate Commission to be appointed by the General Assembly; one on recommendation of the President Pro Tempore of the Senate and one on recommendation of the Speaker of the House of Representatives.

This section became effective August 9, 1999. (BR)

Joint Legislative Commission of Governmental Operations

S.L. 1999-431, Sec. 3.5 (SB 437, Sec. 3.5) increases the membership on the Joint Legislative Commission on Governmental Operations from 30 to 34 members. Appointments by the Speaker of the House and the President Pro Tempore of the Senate are increased from 13 to 15 each.

This section became effective August 9, 1999. (BR)

Legislative Services Commission

S.L. 1999-431, Sec. 3.6 (SB 437, Sec. 3.6) increases the membership on the Legislative Services Commission by one member of the Senate and one member of the House of Representatives.

This section became effective August 9, 1999. (BR)

Equity in Appointments

S.L. 1999-457 (SB 333) provides that the General Assembly recognizes the importance of balance in appointment of both genders to statutorily created decision making boards and commissions. Appointing authorities should select members from among the most qualified persons whose appointment would promote membership on such commissions and boards is reflective of the proportion of each gender in the State's population, or if a local board, in the local area. Each appointing authority must submit a report to the Secretary of State by December 1 of each year disclosing the number and gender of appointments made. A copy of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate. Each appointing authority shall also designate a person responsible for retaining applications for appointment and ensuring that each appliant's gender and qualifications are available for public inspection.

The act became effective August 13, 1999, and applies to appointments and reappointments made after this date. (BR)

Building Codes, Inspection, Construction

Tribal Building Inspections

S.L. 1999-78 (HB 674) authorizes federally recognized Indian tribes to perform building inspections. The act also allows certification and license regulation of building inspectors on tribal land. A prior local act that purported to make the same changes is repealed.

The act became effective May 21, 1999. (GSP)

Fire Mains Comply with Building Code

S.L. 1999-123 (HB 1076) provides that public utility contractors constructing fire service mains for connection to fire sprinkler systems shall terminate those water lines at a flange, cap, plug, or valve inside the building one foot above the finished floor. All fire service mains shall comply with the National Fire Protection Agency standards for fire service mains.

The act became effective October 1, 1999. (BR)

Home Inspector Amendments

S.L. 1999-149 (HB 259) makes a number of changes to the home inspector licensure law. It provides that a home inspector's license will lapse if the licensee does not continuously maintain net assets or a bond as required by the North Carolina Home Inspector Licensure Board (Board). Further, it provides that a licensed associate home inspector's license will lapse if the licensee is not employed by or affiliated with a licensed home inspector. The act imposes additional duties on licensed home inspectors and on licensed associate home inspectors. These duties include: continuous maintenance of the minimum net assets bond for licensed home

inspectors; continuous employment or affiliation with a licensed home inspector for licensed associate home inspectors; and record-keeping requirements for all licensees. Licensees must currently give a written report to each person for whom the inspector performs a home inspection for compensation. The act also requires that licensees make and keep full and accurate records of this completed business. The records must include the written contracts for the work requested as well as the written home inspection reports. The licensee must maintain the records for at least three years. The act also gives the Board the specific authority to require licensees to complete no more than 12 hours of continuing education a year. The Board must approve the courses for which credit is awarded. The act also specifies the fees the Board may charge.

The act became effective October 1, 1999, and applies to licenses applied for or renewed on or after that date. (BR)

Building Inspection Contracts

S.L. 1999-372 (SB 966) authorizes cities and counties to hire private companies to perform building inspections. These companies may only inspect specifically designated projects. The cities and counties that enter into contracts with private companies have discretion to determine when an employee of the contracting company has a conflict of interest that precludes the employee from conducting an inspection. Companies hired under this act must employ individuals who meet the State's code enforcement requirements.

This act became effective August 4, 1999. (ER)

Multiple Exits/ Building Code Changes

S.L. 1999-456, Sec. 40 (HB 162, Sec. 40) gives owners of non-business occupancy buildings built prior to the 1953 Building Code until December 31, 2006, to comply with the multiple exit requirements of the Building Code. Coming into compliance means either putting in an additional exit or taking alternative steps such as installing sprinklers throughout the building. Owners of business occupancy buildings built prior to the 1953 Building Code already had until December 31, 2006 to come into compliance.

This section became effective August 13, 1999. (BR)

Corrections

DOC Prisoners' Uniforms

S.L. 1999-109 (SB 601) repeals S.L. 98-212, Sec. 17.20 requiring all inmate road squads, maintenance road squads, and community work crews in Davidson County to wear horizontally striped uniforms. The act further provides that the Secretary of the Department of Corrections shall have the sole authority to designate uniforms for inmates of the Division of Prisons.

The act became effective May 27, 1999. (BR)

Reduce Membership on Post-Release Supervision and Parole Commission

S.L. 1999-237, Sec. 18.2 (HB 168 Sec. 18.2) reduces the Post-Release Supervision and Parole Commission's membership from five to three members. It also provides that the granting, denying, and revoking of parole or work-release authorization will now be decided by a majority vote of the full commission.

This section became effective July 1, 1999. (ER)

Home as Duty Station Pilot Program

S.L. 1999-237, Sec. 18.3 (HB 168 Sec. 18.3) requires the Department of Correction to report on a pilot program in Cleveland and New Hanover counties that is entitled "Home as a Duty Station." This report is to be made by April 1, 2000, to Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety. The report must contain the following:

- Information on the impact of the program on office expenditures, vehicle leases, and an analysis of the charges for vehicle miles not driven.
- Data on the frequency that officers in the program were required to report directly from home, outside of normally assigned working hours.
- The projected impact of extending the program to additional districts.

This section became effective July 1, 1999. (ER)

Reimburse Counties for Housing and Extraordinary Medical Costs for Inmates, Parolees, and Post-Release Supervisees Awaiting Transfer to State Prison System

S.L. 1999-237, Sec. 18.10 (HB 168 Sec. 18.10) requires the State to reimburse counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system. The reimbursement rate shall be $40.00 per day. This section also requires the Department of Correction (Department) to file quarterly reports on the expenditure of these reimbursement funds. These reports must be filed with:

- The Joint Legislative Commission on Governmental Operations.
- The Joint Legislative Corrections and Crime Control Oversight Committee.
- The Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety.

The reimbursement begins on the day after a sheriff notifies the Division of Prisons (Division) that a prisoner is ready for transfer and the Division informs the sheriff that bed space is not available for that prisoner. The reimbursement continues through the day that the Division receives the prisoner.

This section also addresses the delivery of commitment orders. It provides that when a person is sentenced to imprisonment or commitment to the custody of the Department in district court, the clerk of superior court must provide the sheriff with a signed order of commitment within 48 hours of the issuance of the sentence. If the sentencing to imprisonment or commitment to the custody of the Department occurs in superior court, the clerk is required to provide the sheriff with the signed order of commitment within 72 hours of the issuance of the sentence.

This section became effective July 1, 1999. (ER)

Use of Facilities Closed Under GPAC

S.L. 1999-237, Sec. 18.11 (HB 168 Sec. 18.11) gives the Department of Correction (Department) authority to transfer or lease "small expensive prison units" that were recommended for consolidation by the Government Performance Audit Committee.

Prior to exercising this authority, the Department must consult with local and State officials and may also consult with private non-profit and for-profit entities about the possibility of converting these units to other uses. The Department must give priority to converting these units to "other criminal justice use."

The Department must report the terms of any proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections and Crime Control Oversight Committee.

This section became effective July 1, 1999. (ER)

Criminal Justice Education and Training Standards Commission/Special Committee to Rewrite Standards, Code, and Policy Procedures for Employment of Certified Positions in the Department of Correction

S.L. 1999-237, Sec. 18.14 (HB 168 Sec. 18.14) directs the Criminal Justice Education and Training Standards Commission (Commission) to appoint a special committee. This committee is charged with studying and rewriting the Department of Correction's administrative code provisions, as well as its policies and procedures regarding certified positions, so that they comply with the State Personnel System and with the North Carolina Criminal Justice and Training Standards Commission.

The Chairs of the Commission and the special committee are required to report to the Joint Legislative Corrections and Crime Control Oversight Committee by March 1, 2000. The proposed revisions must then be presented to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety prior to the convening of the next Regular Session of the General Assembly. Upon the Commission's approval, the revisions are to be implemented no later than July 1, 2000.

This section became effective July 1, 1999. (ER)

Pilots to Determine Cost-Effectiveness of Placing All Inmates on Work-Release

S.L. 1999-237, Sec. 18.17 (HB 168 Sec. 18.17) requires the Department of Correction (Department) to provide progress reports on existing pilot programs in the Alamance and Union Correctional Centers. The pilots place all eligible inmates (to the extent possible) on work-release. These progress reports must be made by June 30, 2000, to the Chairs of the Senate and House Appropriations Committee and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety. The original legislation that established these programs directed the Department to make final reports by March 1, 1999. This legislation changes that date to March 1, 2001.

This section became effective July 1, 1999. (ER)

Report on Probation and Parole Caseloads

S.L. 1999-237, Sec. 18.18 (HB 168 Sec. 18.18) directs the Department of Correction to report to the Senate and House Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections and Crime Control Oversight Committee on the case load averages of corrections and parole officers. The report is due by March 1, 2000. The report must include the following:

- Data on current caseload averages for Probation Parole Officer I, Probation Parole Officer II, and Probation Parole Officer III positions.
- An analysis of the optimal caseloads for these new officer classifications.
- An assessment of the role of Surveillance Officers.
- The projected impact of the new officer classifications and procedures on the operating and equipment expenditures of the Division of Community Correction.

This section became effective July 1, 1999. (ER)

Proposed Standards for Private Prisons for Out-of State Inmates

S.L. 1999-237, Sec. 18.19 (HB 168 Sec. 18.19) changes the date by which the Department of Correction (Department) is required to report on the proposed standards for private prisons for out-of-state prisoners. The Department had been required to file a report on these standards by March 15, 1999. The Department now has until November 1, 1999, to file a progress report, and has until March 15, 2000, to file its final report.

This section became effective July 1, 1999. (ER)

Close Security Prisons

S.L. 1999-237, Sec. 18.20 (HB 168 Sec. 18.20) allows the Secretary of Correction (Secretary) to enter into lease-purchase contracts with private entities for the construction of three close security correctional facilities with a total of 3000 cells. These contracts may last for a period of up to 20 years.

The Department of Correction must develop the plans for these facilities and the Office of State Construction must review them. Bids for construction may be taken and the Department of Administration shall make the final award decision. This decision is subject to approval by the Council of State.

This section became effective July 1, 1999. (ER)

Community Work Program

S.L. 1999-237, Sec. 18.21 (HB 168 Sec. 18.21) permits the Secretary of Correction to assign inmates to perform work on private property. Inmates assigned work on private property may not be paid more than $1.00 per hour. The tasks they are assigned to must benefit the citizens of the State or units of government and must also allow the inmates to develop skills that will better equip them for their return to society.

This section became effective July 1, 1999. (ER)

Death Row Inmate Restrictions

S.L. 1999-358 (SB 365) provides that it is the policy of the Department of Correction that death row inmates may not contact the surviving family members of their victims without the written consent of the family members being contacted. The act also provides that the Secretary of the Department of Correction, and not the warden of the State penitentiary in Raleigh, shall schedule execution dates. Executions must be scheduled not less than 30 days nor more than 60 days from receipt of written notification by the Attorney General.

The act became effective August 4, 1999, and applies to execution dates scheduled on or after the effective date. (BR)

Courts and Justice

Traffic Enforcement Statistics

S.L. 1999-26 (SB 76) requires the Division of Criminal Statistics of the Department of Justice to collect and maintain statistics on traffic law enforcement, including the race or ethnicity of the driver.

The act becomes effective January 1, 2000, and applies to law enforcement actions occurring on or after that date. (BR)

Report on Community Mediation Centers

S.L. 1999-237, Sec. 17.3(a) (HB 168, Sec. 17.3(a)) directs all community mediation centers to report annually to the Department of Justice (Department). The Department shall compile and summarize the information and forward it to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety. The community mediation centers' reports shall include the programs' funding and activities. The reports should also include the:

- Types of dispute settlement services provided.
- Clients receiving each type of service.
- Number and type of referrals.
- Number of cases mediated.
- Number of cases resolved in mediation.
- Total number of clients served.
- Total program funding and funding sources.
- Itemization of use of funds and use of State funds.
- Level of volunteer activity.
- Projection of future service demands and funding needs.

This section became effective July 1, 1999. (BR)

Authorize Additional Magistrates

S.L. 1999-237, Sec. 17.4 (HB 168, Sec. 17.4) authorizes one additional magistrate for Camden, Cumberland, and Union counties.

This section became effective July 1, 1999. (BR)

Additional District Court Judges

S.L. 1999-237, Sec. 17.6 (HB 168, Sec.17.6) adds one judge in each of the following counties: Martin (District 2), New Hanover (District 5), Bladen (District 13), Alamance (District 15A), Guilford (District 12), Cabarrus (District 19A), Mecklenburg (District 26), Gaston (District 27A), and Cherokee (District 30). The Governor shall appoint the additional district court judges for these districts. Those judges' successors shall be elected in the 2002 election for four-year terms commencing the first Monday in December of 2002.

The increase in number of judges becomes effective January 1, 2000, as to any district in which no county is subject to Section 5 of the Voting Rights Act of 1965. For those districts in counties subject to Section 5, the increase becomes effective January 1, 2000, or 15 days after the date upon which the increase for the county is approved by the United States Department of Justice, whichever is later. (BR)

Bad Check Program

S.L. 1999-237, Sec. 17.7 (HB 168, Sec. 17.7) removes the sunset provision on the bad check program established in 1997. This section also extends the bad check program to Brunswick, Bladen, New Hanover, and Pender counties. The Administrative Office of the Courts is directed to report on the implementation of the bad check program by April 1 of each year to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety.

This section became effective June 30, 1999. (BR)

Additional Assistant District Attorneys

S.L. 1999-237, Sec. 17.8 (HB 168, Sec. 17.8) provides for one additional assistant district attorney in Prosecutorial Districts 5, 12, 13, 15A, 19A, and 20. The section also provides for two additional assistant district attorneys for Prosecutorial District 10.

This section becomes effective January 1, 2000. (BR)

Investigatorial Assistants

S.L. 1999-237, Section 17.9 (HB 168, Sec. 17.9) sets out those prosecutorial districts in which the district attorney is entitled to appoint an investigatorial assistant. Prosecutorial District 6B, Bertie, Hertford, and Northampton counties, is removed from the list of those prosecutorial districts entitled to an investigatorial assistant. Prosecutorial District 5, New Hanover and Pender Counties, and Prosecutorial District 22, Alexander, Davidson, Davie, and Iredell counties, are added to the list of counties that may have an investigatorial assistant. The District Attorney in Prosecutorial District 10, Wake County, is entitled to appoint two investigatorial assistants.

This section became effective July 1, 1999. (BR)

District Court Vacancies in District 9 and District 9B

S.L. 1999-237, Sec. 17.10 (HB 168, Sec. 17.10) provides that in Districts 9A and 9B only those members of the bar of the judicial district residing in the district court district shall participate in the selection of nominees for the vacancy of district court judgeships.

This section became effective July 1, 1999. (BR)

Extend Indigent Fund Study Commission/Study Public Defender Programs

S.L. 1999-237, Sec. 17.11 (HB 168, Sec. 17.11) extends the date for submission of the Indigent Fund Study Commission's (Commission) report from May 1, 1999, to May 1, 2000. The section also directs the Commission to evaluate the report on the efficiency and cost-effectiveness of the public defender program and recommend improvements to the program or the expansion of the program to additional districts based on the report.

This section became effective July 1, 1999. (BR)

Add Special Superior Court Judges/Add Superior Court Judge in District 22

S.L. 1999-237, Sec. 17.12 (HB 168, Sec. 17.12) authorizes the Governor to appoint four special superior court judges. These judges shall serve five-year terms from the date each judge

takes office. Special judges shall take the same oath and be subject to the same requirements as prescribed by law for regular superior court judges except the requirement of residency in a particular district.

This session law also adds a superior court judge to District 22. The Governor shall appoint the judge and the successor to that judge shall be elected in the 2000 general election to serve the remainder of the unexpired term ending December 31, 2002, in order to provide for unstaggered terms for multiple judgeships in the same district.

This section became effective October 1, 1999. (BR)

Capital Case Program

S.L. 1999-237, Sec. 17.13 (HB 168, Sec. 17.13) directs the Administrative Office of the Courts (AOC) to establish a capital case program within the Office of the Public Defender to provide assistance to districts having difficulty in locating qualified attorneys to handle capital cases. AOC may use funds from the Indigent Persons' Attorney Fee Fund for the 1999-2000 and 2000-2001 fiscal years to establish three assistant public defender positions and one investigator to work specifically on capital cases. AOC shall report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on the effectiveness of the program.

This section became effective July 1, 1999. (BR)

Court Information Technology Fund

S.L. 1999-237, Sec. 17.15 (HB 168, Sec. 17.15) directs the Director of the Administrative Office of the Courts to establish and operate systems and services providing electronic transfer processing and access to court information systems.

The session law also establishes the Court Information Technology Fund (Fund) in the Judicial Department as a nonreverting, interest-bearing special revenue account. Monies in the Fund shall be used to supplement funds otherwise available to the Judicial Department for court information technology. Costs recovered by providing the public with remote electronic access to records shall be remitted to the State Treasurer to be held in the Court Information Technology Fund.

This section became effective July 1, 1999. (BR)

Criminal Case Assistance/ Funds for Court Services

S.L. 1999-237, Sec. 17.17 (HB 168 Sec. 17.17) allows district attorneys to petition the Administrative Office of the Courts for help from local governments that are under a contract with the State to provide assistance with the speedy disposition of certain court cases, and allows local governments to appropriate funds to carry out these contracts. Requesting District Attorneys must show that their cases are backed up beyond their offices' capacity to keep the court dockets reasonably current, or that there is an overwhelming public interest in using additional resources for the speedy disposition of cases. Requests for assistance apply to cases involving drug offenses, domestic violence, or cases presenting other threats to public safety.

This section became effective July 1, 1999. (ER)

Divide Superior Court District 19B Into a Set of Districts

S.L. 1999-237 Sec. 17.19 (HB 168 Sec. 17.19) divides Superior Court District 19B into two districts and provides one judge for each district.

This section becomes effective July 1, 2001. (ER)

Divide Superior Court District 5 Into a Set of Districts

S.L. 1999-237, Sec. 17.20 (HB 168 Sec. 17.20) divides Superior District Court 5 into three districts.

This section becomes effective July 1, 2003. (ER)

Repeal Settlement Reserve Fund

S.L. 1999-237, Sec. 19 (HB 168 Sec. 19) repeals the public settlement reserve fund that was established in 1998. The fund was a repository for monies paid to the State in excess of $75,000 as part of settlement agreements, final orders, or judgements.

This provision directs the Attorney General to file a written report with the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety whenever the State, or one of its agencies, will receive more than $75,000 as part of a settlement, court order, or judgement. This report must be filed at least 30 days before any funds are disbursed.

This section became effective July 1, 1999. (ER)

Criminal Justice Information Network Report

S.L. 1999-237, Sec. 19.2 (HB 168 Sec. 19.2) requires the Criminal Justice Information Network Governing Board (Board) to report to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division of the General Assembly. The report must address:

- The operations of the Board and its progress in developing data-sharing standards, including the estimated time it will take to complete those standards.
- The Board's operating budget and expenditures, including any funds held in reserve for the Board's operation.
- A long-term strategic plan and cost analysis for statewide implementation of the Criminal Justice Information Network.

This section became effective July 1, 1999. (ER)

Use of Seized and Forfeited Property Transferred to State Law Enforcement Agencies by the Federal Government.

S.L. 1999-237, Sec. 19.3(b) (HB 168 Sec. 19.3(b)) prohibits the Department of Justice and the Department of Crime Control and Public Safety from using federally seized property without the prior approval of the General Assembly. 19 U.S.C. 1616a is part of the federal Tariff Act of 1930, which permits customs officers to seize any vessels, vehicles, and their contents when it appears that a breach of federal law has occurred. If forfeiture proceedings are discontinued or dismissed, 19 U.S.C. 1616a permits the federal government to transfer the assets that were the subject of the proceedings to "appropriate State or local officials."

This section became effective July 1, 1999. (ER)

Exempt Justice Academy from the Umstead Act

S.L. 1999-237, Sec. 19.7 (HB 168 Sec. 19.7) exempts the North Carolina Justice Academy (Academy) from the provisions of the Umstead Act, thereby permitting the Academy to compete with private enterprise for the provision of goods and services.

This section became effective July 1, 1999. (ER)

Study Fee Adjustment for Criminal Records Checks

S.L. 1999-237, Sec. 19.8 (HB 168 Sec. 19.8) requires the Office of State Budget and Management (OMB), in consultation with the Department of Justice, to study the feasibility of adjusting the fee charged for criminal records checks in light of the increase in requests for those checks.

OMB must report its findings and recommendations to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division of the General Assembly by March 1, 2000.

This section became effective July 1, 1999. (ER)

Legislative Review of Drug Law Enforcement and Other Grants

S.L. 1999-237, Sec. 20 (HB 168, Sec. 20) provides the method for State review of federal Drug Law Enforcement Grants, as required by federal law. In addition, this section provides that any State grant review required by federal law shall be made by the Joint Legislative Commission on Governmental Operations when the General Assembly is not in session.

This section became effective July 1, 1999. (GSP)

Report on Crime Victims Compensation Fund

S.L. 1999-237, Sec. 20.2 (HB 168, Sec. 20.2) changes the date and required contents of annual report on the Crime Victims Compensation Fund. The Attorney General and the State Auditor must assist the Commission in the preparation of the report.

This section became effective July 1, 1999. (GSP)

Annual Evaluation of the Tarheel Challenge Program

S.L. 1999-237, Sec. 20.4 (HB 168, Sec. 20.4) directs the Department of Crime Control and Public Safety to make annual reports to the House and Senate Appropriations Committees on the operations and effectiveness of the National Guard Tarheel Challenge Program (an intervention program designed to prevent juvenile crime).

This section became effective July 1, 1999. (GSP)

Crime Control Purchase Metal Detectors to Reduce Crime in Schools

S.L. 1999-237, Sec. 20.5 (HB 168, Sec. 20.5) allocates funds appropriated to the Department of Crime Control and Public Safety for the purchase of metal detectors for public schools.

This section became effective July 1, 1999. (GSP)

Annual Evaluation of Juvenile Justice Community Programs and Multipurpose Group Homes

S.L. 1999-237, Sec. 21 (HB 168, Sec. 21) directs the Office of Juvenile Justice (Office) to conduct an annual evaluation of wilderness camp programs, the Governor's One-on-One

Program, the On Track Program, the Guard Response Alternative Sentencing Program, and multipurpose group homes. The Office must submit it reports to the House and Senate Appropriations Committees by March 1 of each year.

This section became effective July 1, 1999. (GSP)

Study Staffing at Training Schools and Detention Centers

S.L. 1999-237, Sec. 21.4 (HB 168, Sec. 21.4) authorizes the Office of Juvenile Justice (Office) to contract with consultants for a study of staffing in training schools and detention centers. The Office is to report its findings to the House and Senate Appropriations Committees of the General Assembly by April 1, 2000.

This section became effective July 1, 1999. (GSP)

Juvenile Justice Information System Report

S.L. 1999-237, Sec. 21.8 (HB 168, Sec. 21.8) directs the Criminal Justice Information Network Governing Board (Board) to annually evaluate the status of the juvenile justice information system. The Board is to report its findings to the House and Senate Appropriations Committees of the General Assembly by April 1 of each year.

This section became effective July 1, 1999. (GSP)

Establish a Pilot Program for a Multifunctional Juvenile Facility

S.L. 1999-237, Sec. 21.13 (HB 168, Sec. 21.13) authorizes the Office of Juvenile Justice (Office) to establish a pilot program in Eastern North Carolina to provide services to juveniles in the juvenile justice system. The Office may contract with a private for-profit or nonprofit firm to construct and operate a multifunctional juvenile facility totaling up to 100 beds. The Office is to report to the House and Senate Appropriations Committees on the pilot program by March 1, 2000, and make subsequent reports by March 1, 2001, and January 1, 2002.

This section became effective July 1, 1999. (GSP)

Reorganize Superior Court Divisions /Pilot Fund

S.L. 1999-396 (SB 1025) enacts a recommendation of the Commission for the Future of Justice and the Courts of North Carolina. The act establishes eight judicial divisions with 62 superior court districts (prior to enactment there were four judicial divisions). It also gives the Chief Justice the authority to select up to two divisions or portions of those divisions to participate in a pilot program for the organization and management of trial courts. When establishing the pilot program or programs, the Chief Justice is asked to:

- Designate one judge as a coordinating judge for each pilot program.
- Assign staff to assist the coordinating judges.
- Appoint an advisory judicial council to each pilot program.

The act also requests that the Chief Justice give the coordinating judge or judges the authority to:

- Establish a schedule for all sessions of trial court.
- Assign judges.
- Develop and implement a procedure for calendaring cases.
- Assign particular categories of cases to individual judges.

- Determine the circumstances under which judges may hear motions and pretrial proceedings outside the county in which the case arose, provided the case would remain within the same judicial district.
- Determine the circumstances under which a case may be tried outside the county in which it arose if the case would remain within the same judicial district.
- Establish local rules for the management of the pilot program, subject to the approval of the Chief Justice.
- Transfer funds within budget categories to the extent allowed by the General Assembly and the Director of the Budget.

The act also directs the Chief Justice and Administrative Office of the Courts (AOC) to report to the General Assembly by March 1, 2002, on the operation of the programs. In addition, the act appropriates funds for the 1999-2000 fiscal year to be placed in a reserve for use by the AOC to establish two staff positions and to provide equipment and consulting services needed to operate the pilot programs.

The act becomes effective January 1, 2000. (ER)

Raise Small Claims Amount /Counsel Waive

S.L. 1999-411 (HB 939) increases from $3,000 to $4,000 the limit for the amount in controversy in a small claims action.

This act becomes effective October 1, 1999, and applies to claims for causes of action arising on or after that date. (GSP)

Licensure

Auctioneer Amendments

S.L. 1999-142 (HB 301), as amended by S.L. 1999-456, Sec. 23 (HB 162, Sec. 23) makes various changes to the statutes governing auctioneers. It deletes the powers and duties of the Auctioneers Commission (Commission), recodifies and reorganizes those powers and duties, and grant to the commission the power to assess a civil penalty. The civil penalty is capped at $2,000, and must be remitted to the school fund of the county in which the violation occurred. The act requires criminal history checks for applicants for initial licensure as an auctioneer. This does not apply to applicants for relicensure as an auctioneer, apprentice auctioneers, and auction firms. The Commission must conduct State criminal history checks on all applicants and national criminal history checks on applicants who have not resided in North Carolina during the past five years. All information the Commission receives through the checks must be kept confidential. A conviction for a felony or a crime involving fraud or moral turpitude will not automatically prohibit licensure. The act also establishes guidelines the Commission must use when determining whether a license will be denied. Licensure may be denied to an applicant who refuses to consent to the criminal history check. Finally, the Commission must notify the applicant of the applicant's right to review the criminal history information, the procedure for challenging the accuracy of the criminal history, and the applicant's right to contest the Commission's denial of licensure.

The act provides that no person shall be licensed as an auctioneer, apprentice auctioneer, or receive an auction firm license unless that person has a high school diploma or its equivalent. This requirement does not apply to anyone who was licensed prior to July 1, 1999. The Commission may require up to six hours of continuing education. It also permits the Commission to impose different or no continuing education requirements on different classes of licensees. The Commission may also waive continuing education requirements for hardship, disability, illness, or under other circumstances as the Commission deems appropriate.

The Commission must maintain $200,000 in the Auctioneers Recovery Fund. Funds in excess of $200,000 may be used to promote education about the profession, to underwrite educational projects for licensees, to advance the auctioneer profession, and to work with auctioneers' associations to promote the auctioneer profession. The act increases the fees for auctioneers, apprentice auctioneers, and auction firms.

The provisions regarding criminal history checks, the requirement for a high school diploma, continuing education requirements, and the increase in fees became effective July 1, 1999. The civil penalty authority is effective October 1, 1999. The remainder of the act is effective July 21, 1999. (GSP)

General Contractors Licensure

S.L. 1999-427 (SB 1058) makes various changes regarding the licensure of general contractors. It requires the General Contractors Licensing Board (Board) to test applicants on their knowledge of relevant provisions of the North Carolina State Building Code. It grants to the Board the authority to refuse to issue or renew a contractor's license for fraud or deceit in obtaining a license, gross negligence, incompetency, or misconduct. Previously the Board could only revoke a license. It also grants to the Board the authority to restrict a person's ability to act as the qualifying person under which a corporation, partnership, or other organization may obtain and maintain a general contractor's license.

The act became effective August 5, 1999. (ER)

Geologist Licensure

S.L. 1999-355 (SB 1004) authorizes the State Board for Licensing of Geologists (Board) to appoint or retain investigators for the purpose of investigating any acts that may violate the Geologist Licensing Act, the Board's code of professional conduct, or the Board's rules. These investigations are confidential until the Board takes disciplinary action against a licensee or registrant. Records generated by these investigations are not public records unless they are admitted into evidence in a hearing before the Board.

This act also expands the grounds for which the Board may refuse to grant or renew a license to include:

- Conviction of a felony.
- Violations of the Geologist Licensing Act, the Board's code of professional conduct, the Board's rules, or the Board's orders.
- Gross unprofessional conduct.
- Professional incompetence.

The act also grants to the Board the authority to levy civil penalties up to $5,000.

The act became effective July 22, 1999. (ER)

Personal Information Disclosures

S.L. 1999-446 (HB 1173) protects the home address and telephone numbers of applicants, licensees, and members of their family from being publicly released by the Private Protection Services Board and the Alarm System Licensing Board. These provisions became effective December 1, 1999. The act also authorizes the Alarm System Licensing Board to issue an apprenticeship registration permit for persons 16 and 17 years of age.

The act became effective October 1, 1999. (GSP)

Purchase and Contract

Amend Purchase / Contract Exemptions

S.L. 1999-368 (SB 776) removes a July 1, 1999 sunset from a law that exempted the North Carolina State Ports Authority from certain State public contract requirements. The act also removes the July 1, 1999 sunset on the North Carolina Seafood Industrial Park Authority's exemption from all public contract requirements. That exemption now applies only to projects that have an estimated expenditure of public funds of less than $250,000.

State Ports Authority Exemptions. The State Ports Authority's (Ports Authority) exemption from several State public contract requirements was due to expire on July 1, 1999. With the passage of this legislation, those exemptions remain in effect indefinitely. If the Ports Authority finds that the delivery of a particular port facility must be expedited for good cause, it is exempt from the following State purchase and contract provisions (to the extent necessary to expedite delivery):

G.S. 133-1.1(g)	Color schedules for job-installed finishes.
G.S. 143-128(a)	Prepare separate specifications for heating & air conditioning, plumbing & gas, electrical, and general work.
G.S. 143-128(b)	Separate prime contracts for projects over $500,000.
G.S. 143-128(c)	Ability to accept single prime contracts for projects under $500,000.
G.S. 143-128(d)	Single prime and alternative contracts for projects over $500,000.
G.S. 143-128(e)	Ability to use project expediters.
G.S. 143-132	Minimum number of bids.
G.S. 143-135.26	State Building Commission rules.

Prior to exempting a project from these requirements, the Ports Authority must provide the Secretary of Administration with written notice of its intent to exercise the exemption. This notice must set out the requirements to be exempted, the reason the exemption is necessary, and how the Ports Authority anticipates the exemption will expedite the delivery of the port facility. The Ports Authority must report quarterly to the Joint Legislative Commission on Governmental Operations on any building contract exceeding $250,000 to which an exemption is applied.

North Carolina Seafood Industrial Park Authority Exemptions. Prior to the passage of this act, the North Carolina Seafood Industrial Park Authority (Seafood Authority) was exempted from all of the State's public contract requirements. That exemption was due to expire on July 1, 1999.

This act renews all but one (minority business contracting goals) of the exemptions, but only applies those exemptions to projects that are estimated to require less than a $250,000 public expenditure. Projects estimated to require public expenditures of more that $250,000 are now subject to all the State's public contract requirements.

In addition, this act exempts the Seafood Authority from having to submit construction plans and specifications for approval by the Department of Administration when projects are estimated to require less than a $250,000 public expenditure.

The Seafood Authority must now also make quarterly reports to the Joint Legislative Commission on Governmental Operations regarding building contracts to which the exemptions

apply and must also provide information regarding its compliance with minority participation goals.

The act became effective July 1, 1999. (ER)

Waiver of Competitive Bidding Modifications

S.L. 1999-400 (SB 968) amends the State's competitive bidding law. It authorizes the Division of Purchase and Contract within the Department of Administration to review and decide protests regarding the awarding of State contracts valued at more than $25,000. Protests to the awarding of State contracts for less than $25,000 are to be handled according to the rules and criteria adopted by the Secretary of the Department of Administration (Secretary).

The act also provides that any waiver from the State's competitive bidding requirements for equipment, materials, supplies, or services is subject to prior review by the Secretary if the expenditure exceeds $10,000.

The act became effective September 1, 1999. (ER)

Small Business Procurement Act

S.L. 1999-407 (SB 284) directs the Department of Administration (Department) to compile information on small and medium sized business participation in State contracts, and submit the information annually to the General Assembly. The act also directs the Department to study measures to encourage and foster participation by small and medium-sized businesses in State procurement contract awards, and report to the General Assembly by April 15, 2000.

The act became effective August 5, 1999. (GSP)

NC Purchasing Opportunities

S.L. 1999-417 (SB 283) requires the Division of Purchase and Contract to electronically advertise information on contract and purchase requirements for the Division of Purchase and Contract, the Office of State Construction, the Department of Transportation, and other agencies of State government that make direct purchase from private suppliers. The act requires that a printed copy be made available upon request. The act authorizes temporary rules to carry out the provisions of the act.

The act became effective August 5, 1999. (GSP)

State Employment

Exempt Position Clarification

S.L. 1999-253 (HB 1104). See **Employment.**

Voluntary Shared Leave

S.L. 1999-170 (HB 820). See **Employment.**

State Auditor Records Access

S.L. 1999-188 (SB 885) gives the State Auditor the authority to review, copy, and collect employee personnel files. These files may then, at the Auditor's discretion, be released to

representatives of the State and federal government in connection with matters that are officially before them, including criminal investigations.

Under prior law, state employee personnel records were confidential. They could not be viewed by State or federal authorities unless the department head of the agency in which a particular record was maintained determined that inspection of a particular record was necessary and essential to the pursuit of a proper function in the reviewing agency. In addition, prior law also prohibited the release of these records, without a warrant, for purposes of criminal prosecution or tax investigation.

The act became effective June 18, 1999. (ER)

Travel Rates of State Employees

S.L. 1999-237, Sec. 28.20 (HB 168, Sec. 28.20) establishes standard travel and subsistence reimbursement rates for State employees. Reimbursement is set at the Internal Revenue Service's standard mileage rate for work-related (non-commuting) travel in personal vehicles. Subsistence rates are set at $81.00 per day for in-State travel, and $93.00 per day for out-of-State travel. The Director of the Budget must revise these amounts every other year in accordance with the Consumer Price Index.

This section became effective July 1, 1999. (GSP)

State Employees Combined Campaign

S.L. 1999-250 (HB 228) amends G.S. 143-340, the powers of the Secretary of Administration, to include the authority to establish the State Employees Combined Campaign in the Department of Administration. The act also ratifies any rules pertaining to the State Employees Combined Campaign adopted prior to the effective date of the act.

The act became effective July 2, 1999, and applies to any rule making proceeding initiated by the Department of Administration for the State Employees Combined Campaign before that date. (BR)

Workers' Compensation/ National/ State Guard

S.L. 1999-418 (SB 877) amends the definition of "employee" under the North Carolina Worker's Compensation Act to include members of the North Carolina National Guard and members of the North Carolina State Guard while on State active duty under orders of the Governor.

The act became effective August 5, 1999. (ER)

Miscellaneous

Aquarium Exhibit Disposal

S.L. 1999-49 (HB 326) amends the statutes governing the North Carolina Aquariums, to allow the Division of North Carolina Aquariums to dispose of exhibits and objects from collections by sale, lease, or trade in accordance with generally accepted practices for zoos and aquariums accredited by the American Association of Zoos and Aquariums. Proceeds from any sale are to be credited to the North Carolina Aquariums Fund. The Division of North Carolina Aquariums must report to the Joint Legislative Commission on Governmental Operations by September 30 of each year on the North Carolina Aquariums Fund. The initial report is due September 30, 2000.

The provisions allowing disposal of exhibits and objects from collections became effective May 14, 1999. The reporting requirements of the act became effective July 1, 1999. (BR)

State Money Recipients/Conflict of Interest Policy

S.L. 1999-237, Sec. 7.5 (HB 168, Sec. 7.5) requires each private, nonprofit entity eligible to receive State funds to file a notarized copy of its policies addressing conflicts of interest involving the entity's management staff and members of its governing board. The policy must be filed before any funds may be disbursed to the entity. The policy must address situations where these individuals may directly or indirectly benefit from the disbursement of state funds and shall include actions to be taken by the entity to avoid conflicts of interest and the appearance of impropriety.

This section became effective July 1, 1999. (BR)

Food Service at North Carolina Aquariums

S.L. 1999-237, Sec. 15.17 (HB 168, Sec. 15.17) authorizes the North Carolina Aquariums to operate or contract for food and vending services at the aquariums, notwithstanding State law that grants a preference to the visually handicapped for the operation of food and vending facilities on State property. The Department of Health and Human Services is responsible for the program. Under this section, the proceeds from food and vending sales shall be credited to the North Carolina Aquariums Fund.

This section became effective July 1, 1999. (BR)

Credit Enhancement for Tourism Development Projects

S.L. 1999-237, Sec. 16.18 (HB 168, Sec. 16.18) directs the Department of State Treasurer and the Department of Commerce to jointly develop legislative proposals for credit enhancement of tourism development projects in rural counties. Credit enhancements may be in the form of State revenue bonds, other State debt, State loan guarantees, or other mechanisms. Proposals shall be designed to provide incentives for tourism development similar to industrial revenue bonds. The Departments shall report jointly to the Joint Legislative Commission on Governmental Operations by May 1, 2000. Each proposal shall be accompanied by draft legislation and a fiscal estimate.

This section became effective July 1, 1999. (BR)

Extend Pilot Program on Reporting on Collection of Bad Debts by State Agencies

S.L. 1999-237, Sec. 25 (HB 168, Sec. 25) authorizes the Office of the State Controller to conduct a pilot program for the collection of bad debts owed to state agencies, exploring the use of private collection agencies, and the participation of local governments. The bill also establishes a Special Reserve Fund for the deposit of collected debts.

This section became effective July 1, 1999. (GSP)

Maritime Museum

S.L. 1999-237, Sec. 26.1 (HB 168, Sec. 26.1) authorizes the Department of Cultural Resources to operate the Southport Maritime Museum in Brunswick County as a branch of the North Carolina Maritime Museum.

This section became effective July 1, 1999. (GSP)

Study Use of Internet for Agency Publications

S.L. 1999-237, Sec. 26A (HB 168, Sec. 26A) requires a number of major state agencies to explore using the Internet for the distribution of reports and information to the public. The purpose of the section is to reduce the costs of printing and distributing written reports.

This section became effective July 1, 1999. (GSP)

State Treasurer's Investment Authority

S.L. 1999-251 (HB 283) amends G.S. 147-69.1 (Investments authorized for General Fund and Highway Fund assets) so that the State Treasurer may invest monies from the General Fund, Highway Fund, and Highway Trust Fund in time deposits of a financial institution that is not organized under North Carolina law or does not have its principal office in North Carolina. The security and rate of return requirements for investments made from monies in these funds remain the same. In addition, the act provides that monies from the North Carolina National Guard Pension Fund and the Retiree Health Premium Reserve Account shall be invested according to the provisions of G.S. 147-69.2 (Investments authorized for special funds held by the State Treasurer).

The act became effective July 5, 1999. (GSP)

Filing of Foreign Agreements

S.L. 1999-260 (SB 192) requires all State agencies entering into memoranda of understanding or agreements of a noncommercial nature with foreign governments to file a copy of these documents with the Secretary of State (Secretary). The act also authorizes the Secretary to offer international relations assistance to other governmental agencies and units and to publish required publications electronically. The act authorizes the Secretary to accept contributions and grants to be spent on promoting international relations and hosting foreign dignitaries and leaders in North Carolina. Additionally, the act requires that all memoranda and understanding that is required to be filed be approved in advance by the Governor.

The act became effective July 1, 1999. (GSP)

Chief of NC Guard

S.L. 1999-442 (HB 291) grants to the Governor the authority to place units of the North Carolina National Guard in a State of Active Duty status to assist with the inauguration of the Governor and the Council of State.

The act became effective July 21, 1999. (GSP)

Additional Duty of Secretary of State

S.L. 1999-316 (HB 319) adds an additional duty to the North Carolina Secretary of State (Secretary). The Secretary is authorized to apply for and accept grants from the federal government and its agencies, and from any other group The Secretary may exercise this authority in order to carry out the purposes of the Nonprofit Corporation Act and to aid in the development of nonprofit corporations.

The act became effective July 15, 1999. (GSP)

Approve Tobacco Settlement Nonprofit Corporation

S.L. 1999-02 (SB 06). See **Agriculture.**

Emergency Shelter/Health Facilities Rules

S.L. 1999-307 (SB 34). See **Human Resources.**

Validating Certain Notarial Acts

S.L. 1999-21 (SB 62) validates any acknowledgement taken and any instrument notarized on or before August 1, 1998, by a person whose notarial commission was revoked on or before January 30, 1997. In addition, the act extends to February 28, 1999, the validation of notorial acts and errors.

The act became effective April 13, 1999. (GSP)

Unclaimed Property Act

S.L. 1999-460 (SB 244). See **Property, Trusts, and Estates.**

State Agency Telephone Menus

S.L. 1999-429 (SB 255) clarifies that State agencies must provide callers with the option of reaching an attendant after accessing no more than two recorded menus. In addition, each State agency must put the agency's telephone number on all agency letterhead. This provision became effective September 1, 1999. Each agency is directed to report its compliance efforts to the Joint Legislative Commission on Governmental Operations by October 1, 1999. Except as otherwise stated, this act became effective July 14, 1999. (GSP)

Affordable Housing

S.L. 1999-366 (SB 708) permits counties to engage in residential housing construction. Counties are authorized to appropriate and expend funds on new or rehabilitated property or to acquire property for development. In addition, counties may convey these properties by public or private sale to any entity that provides affordable housing or to persons of low or moderate income.

Housing projects constructed under this act may provide housing to persons who are not of low or moderate income as long as 40% of the units in the project are reserved for persons of low or moderate income.

The act became effective March 3, 1999**.** (ER)

State Land Transactions

S.L. 1999-252 (HB 985) changes the way that the State handles land transactions as follows:

- Raises the threshold (from $12,000 to $25,000) for which the State has to advertise for bids in order to rent real property. When the Department of Administration determines that it is in the best interest of the State to lease land that has an estimated rental cost of $25,000 or more per year, it must publicly solicit bids for rental property.
- Permits the Governor and the Council of State to exclude State real property leases of unique locations from the State's rental lease bid requirements.
- Provides that the State can only sell or lease land at less than market value to a nonprofit entity if the transaction is in consideration of a public service rendered by the nonprofit in connection with the nonprofit's tax-exempt status and not an unrelated trade or business.

- Requires that the Joint Legislative Commission on Government Operations, the Governor, and the Council of State must be notified prior to an authorization for a transfer of real property to a nonprofit corporation if the transfer does not include a reversionary interest.
- Provides that acquisitions and dispositions of property by the East Carolina University Medical Faculty Practice Plan and the University of North Carolina Health Care System shall be governed by rules established by those entities' boards of directors and shall not be subject to general law governing State acquisitions and dispositions of property.

The act became effective July 2, 1999. (ER)

Mass Gatherings Law /Clarification

S.L. 1999-03 (SB 23) creates an exemption from the State's mass gathering laws. Under the State's public health laws, whenever 5,000 or more people gather for more than 24 hours in an open air space, the organizers of the gathering must: obtain a permit from the Secretary of Health and Human Services; carry liability insurance; and post a performance bond. With the passage of this act, permanent stadiums that have adjacent campgrounds and host annual events that have attracted more than 70,000 people during the past five years are exempted from the permit, insurance, and bond requirements that are otherwise required by State law.

The act became effective March 3, 1999. (ER)

Technology

SIPS Name Change/IRMC

S.L. 1999-347 (HB 253), as amended by S.L. 1999-162, Sec. 62 (HB 162, Sec. 62) and S.L. 1999-434, Secs. 26-29 (SB 222, Secs. 26-29), changes the name of the State Information Processing Services of the Department of Information Technology to the Office of Information Technology Services. In addition, the act requires most State agency information technology projects over $500,000 to be certified by the Information Resources Management Commission.

The act became effective Aug 10, 1999. (GSP)

Joint Select Committee on Information Technology

S.L. 1999-237, Sec. 22 (HB 168, Sec. 22). See **Technology.**

Information Technology Cost Reporting to the General Assembly

S.L. 1999-237, Sec. 22.1 (HB 168, Sec. 22.1). See **Technology.**

Technological Infrastructure Study

S.L. 1999-237, Sec. 22.2 (HB 168, Sec. 22.2). See **Technology.**

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. 2.1(1)(e-j) (HB 163, Sec. 2.1(1)(e-j)) authorizes the Legislative Research Commission to study:

- The Department of Administration procurement card program including its effectiveness and efficiency, costs and benefits, impact on accounting, identification of realized savings, and the feasibility of statewide implementation.
- The acquisition of additional parkland at Lake James State Park.
- The State government construction project review and approval process.
- The digitization of public records by the Division of State Archives.
- The regulation of nondepository trust companies and authorization of family trust companies.
- State tort liability and immunity.

This section became effective July 1, 1999. (BR)

Referals to Existing Commissions

NER Interim Study of Energy Division of Dept. of Commerce

S.L. 1999-237, Sec. 16.11 (HB 168, Sec. 16.11) directs the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources to study the effectiveness and efficiency of the Division of Energy in the Department of Commerce in administering the State's energy programs and Petroleum Overcharge funds. The Commitees shall report their findings and any legislative proposals to the 2000 Regular Session of the 1999 General Assembly no later than May 1, 2000.

This section became effective July 1, 1999. (BR)

Chapter 17
Taxation

Cindy Avrette (CA), Martha Harris (MH),
Mary Shuping (MS), Martha Walston (MW)

Enacted Legislation
Tax

Eliminate Stamps for Deed Tax

S.L. 1999-28 (HB 56) eliminates the requirement that tax stamps be used to indicate whether the excise tax on conveyances has been paid. This change is effective July 1, 2000. The act also provides that the civil and criminal penalties applicable to all other State taxes also apply to the conveyance tax. This change is effective July 1, 2000 and applies to prosecutions on or after that date. (CA)

Continuing Care Retirement Homes

S.L. 1999-191 (SB 325) makes corrections and conforming changes to the 1998 legislation that temporarily revised a property tax exemption for continuing care retirement centers because the 1998 legislation has been held unconstitutional. Specifically, the act removes the unconstitutional grandfather clause that limited the property tax exemption to the centers whose charters or bylaws met the definition on August 15, 1998. It also clarifies that the entity that selects the governing board of the center may be a corporation or an unincorporated association, provides that the entity that selects the governing board of a nonprofit center may be a charitable organization, a fraternal beneficiary association, or a domestic fraternal association, and discourages counties and cities from collecting prior years' taxes on exempt centers on or after January 1, 1998.

The act became effective June 18, 1999. (MS)

Registered Motor Vehicle Tax Budgeting

S.L. 1999-261 (SB 484) changes the method of calculating the ratio of property tax collections to the total levy for local government budgeting purposes by taking into consideration the time frame necessary to collect on a registered motor vehicle (RMV) tax bill. This act should result in a more accurate estimate of the property tax collection ratio for budgeting purposes.

The act is effective July 9, 1999, and applies to budget ordinances adopted after July 1, 1999. (MS)

Real Property Tax Penalty

S.L. 1999-297 (SB 817) requires the board of county commissioners of each county to install a permanent listing system under which the county tax assessor is responsible for listing all real property for tax purposes. Previously, this was the property owner's responsibility. This change will apply to only six counties: Clay, Graham, Swain, Vance, Warren, and Yancey. All other counties have adopted permanent listing systems. The permanent listing system must be installed and effective for taxable years beginning on or after July 1, 2004.

In addition, the act provides that the late listing penalty of 10% will not apply to property that has not been improved or transferred since it was last listed. This penalty exemption is effective for taxes imposed for taxable years beginning on or after July 1, 1999 and sunsets on July 1, 2004. (CA)

Technology Commercialization Credit

S.L. 1999-305 (SB 1110) adds the technology commercialization credit to the William S. Lee Quality Jobs and Business Expansion Act. The Bill Lee Act was enacted in 1996. This type of credit is new. The new investment tax credit is an alternative to the existing 7% tax credit for investing in machinery and equipment. The technology commercialization credit applies only to investments in machinery and equipment used in production based on technology licensed from a research university. In addition, to qualify, the machinery and equipment must be located in a tier one, two, or three enterprise area. Finally, the taxpayer's investment must equal at least $10 million during the taxable year, and must total at least $100 million over a five-year period. If the investment totals between $100 million and $150 million over five years, the technology commercialization credit is equal to 15% of the amount invested. If the investment equals or exceeds $150 million over five years, the technology commercialization credit is equal to 20% of the amount invested.

The act is effective for taxable years beginning on or after January 1, 2000. (MW)

ESC/Unemployment Tax Changes

S.L. 1999-321 (HB 275) makes several revisions to unemployment insurance taxes.

Reducing Minimum Credit Ratio. The act changes the minimum credit ratio of employers who are granted a zero unemployment tax rate by lowering the credit ratio from 5% to 4%. This change became effective April 1, 1999.

Temporary Reduction of UI Taxes/Contribution for Reemployment & Training. The act temporarily reduces unemployment insurance taxes for most employers by 20%, less for new employers and those employers with a high debt ratio. Employers paying a zero tax rate are not affected by the change. In addition, the act levies a "training and reemployment contribution" equal to a percentage of each employer's unemployment insurance tax. The majority (80%) of the contributions will be appropriated to the Department of Community Colleges for various worker training programs. The remainder will be used for administrative costs and for nonrecurring expenditures for enhanced reemployment services. When the unemployment insurance tax reduction and the training and employment contribution are combined, all employers will pay the same or slightly less than under the prior law. These changes become effective January 1, 2000 and sunset January 1, 2002. (CA)

Intangibles Tax Settlement

S.L. 1999-327 (SB 1043) authorizes the General Assembly to appropriate $440 million to a settlement fund over the next two years. The money in the settlement fund will be used to pay tax refunds claimed by taxpayers who paid the intangibles tax on stocks for tax years 1990 through 1994, without protesting the payment of the tax in a timely manner

The President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Class Counsel for the plaintiffs in the Smith and Shaver lawsuits signed a settlement agreement on July 8, 1999. The Superior Court of Wake County entered a consent order on that same day tentatively approving the settlement agreement. The consent order provides for the following:

- The General Assembly will appropriate $440 million to a settlement fund over the next two years: $200 million will be appropriated from the Savings Reserve Account

for the 1999-2000 fiscal year to the Department of the State Treasurer on October 1, 1999. It is the intent of the General Assembly to restore to the Savings Reserve Account the sum of $200 million during the 2000-2001 fiscal year. An additional $240 million will be allocated to the fund no later than July 10, 2000.

- Within the Settlement Fund, 85% of the funds will be allocated to the "Smith/Shaver Claims Fund Account" and 15% will be allocated to the "Smith/Shaver Administration Account". Interest and earning on all proceeds will be added as principal to the taxpayers' Claims Fund Account.
- The class counsel, under the supervision of the court, will administer the Settlement Fund.
- No disbursement will be made from the Claims Fund Account until after August 1, 2000.
- Class members will be provided full notice of the terms of the settlement agreement and their rights.
- The State is immune from any further liability for claims brought by taxpayers regarding the payment of intangibles tax on shares of stock.

The act became effective July 20, 1999. (MW)

Phase II Funds/Immunity/Tax–Exempt

S.L. 1999-333 (HB 74) contains two tax provisions that will apply to taxes imposed for taxable years beginning on or after January 1, 1999. First, it provides a corporate and trust income tax exemption for the interest, investment earnings, and gains of a trust that is established to compensate those who suffer economic loss as a result of a settlement agreement between North Carolina and one or more manufacturers to settle claims of the states against the manufacturers for damages arising from a product of the manufacturers. Second, it creates a corporate income tax credit for manufacturers who produce cigarettes for exportation to a foreign country. The credit is a dollar amount per cigarette exported for those manufacturers who export at least 50% as many cigarettes in the taxable year as they did in calendar year 1998. The dollar amount ranges from 40¢ to 20¢ per 1,000 cigarettes exported. The credit is capped at $6,000,000 per year or 50% of the manufacturer's corporate tax liability for any given year. The credit will sunset for taxable years beginning on or after January 1, 2005. (CA)

Revenue Laws Technical Changes

S.L. 1999-337 (SB 55), as amended by S.L. 1999-456, Sec. 26 (HB 162, Sec. 26) makes numerous technical and clarifying changes to the revenue laws and related statutes as recommended by the Revenue Laws Study Committee. Most changes are effective July 29, 1999. (CA)

Use Tax Payment/Other Changes

S.L. 1999-341 (HB 1433) simplifies use tax collection by allowing an individual who owes use tax to pay the tax with the individual's income tax return. This change primarily affects mail-order purchases and other out-of-state purchases, including Internet purchases, which are subject to State tax under current law. This change is effective for taxable years beginning on or after January 1, 1999. In addition, effective July 1, 1999, the Secretary of Revenue is authorized to provide the public with access to the names and account numbers of taxpayers who are not required to pay sales and use tax because of an exemption or because they are authorized to pay the tax directly to the Department of Revenue.

The act also permits the Secretary of Revenue to use a portion of the additional use tax revenue to:

- Pay for the costs of programming, form revision, and providing resources for taxpayer assistance in connection with the new use tax collection method.
- Implement a program to allow semimonthly sales and use taxpayers to file their returns electronically.
- Contract for the collection of delinquent tax debts owed by nonresidents and foreign entities.
- Conduct a study, in cooperation with the State Controller, to identify and evaluate proposals for more efficient collection of taxes.

These provisions are effective July 1, 1999.

The act also prohibits the State from contracting with a vendor for goods or services if the vendor is required by law to collect use tax for the State but refuses to do so. It allows the Secretary of Revenue to provide the Secretary of Administration with the list of those vendors. This provision is effective July 1, 1999. (MW)

Simplify Renewable Energy Credits

S.L. 1999-342 (HB 1472) repeals several corporate and individual income tax credits relating to energy savings devices and replaces them with a tax credit for investing in renewable energy property. "Renewable energy property" is defined as any of the following machinery and equipment:

- Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel.
- Hydroelectric generators.
- Solar energy equipment.
- Wind equipment

The amount of the credit is 35% of the cost of the property placed in service. The credit is capped at between $1,400 and $10,500 for residential installations and at $250,000 per installation for nonresidential installations.

The act is effective beginning with the 2000 taxable year. (MH)

Newsprint Tax Credit Change

S.L. 1999-346 (HB 1479) modifies the excise tax on virgin newsprint by delaying the increase in the percentage of recycled content required for newsprint. The use requirement for recycled content was scheduled to increase to 40% in 2001. This act moves back that date until 2005; therefore, the recycled content requirement will remain at 35% until that time.

The act also increases the credit from one-half ton to one ton that can be used towards the recycled content percentage goals for publishers who develop and operate, or contract for the operation of, a newspaper recycling program. The credit is also extended to include the recycling of magazines.

The act is effective July 1, 1999. (MH)

Motor Vehicle Tax Value/E&R Board

S.L. 1999-353 (HB 315) changes the date for the determination of the property tax value of a classified motor vehicle. The date is changed from January 1 preceding the date the new registration is applied for or the current registration expires, to January 1 of the year the taxes are due. This change is effective for taxes imposed on taxable years beginning on or after July 1, 2000.

The act also extends the authority of the Stokes County Board of Equalization and Review to continue to meet after the Board has performed its statutory duties in order to hear

and decide all appeals relating to taxpayers' property listings or appraisals. This change is effective July 22, 1999. (MW)

Amend Bill Lee Act/Incentives

S.L. 1999-360 (SB 1115), as amended by S.L. 1999-456, Sec. 64 (HB 162, Sec. 64) amends the tax laws to expand existing tax incentives for businesses and adds new tax incentives and tax reductions for specific businesses.

- Extend sunset on Bill Lee Act from 2002 to 2006, and require Department of Commerce to continue studying impact of Bill Lee Act incentives.
- Add passenger air carrier training center to Bill Lee Act credits, effective January 1, 1999. This change will have an insignificant impact on General Fund revenues.
- Allow an interstate passenger air carrier a sales tax exemption for aircraft parts and accessories purchased for use at its hub in this State, effective May 1, 1999.
- Reduce sales tax from 6% to 1% with an $80 cap for flight crew training aircraft simulators purchased by an interstate passenger air carrier for use at its hub in this State, effective May 1, 1999.
- Allow certain nonprofit insurance companies an eight-year sales tax refund for taxes paid on building materials and fixtures, and a four-year sales tax refund for taxes paid on capitalized computer equipment, effective May 1, 1999.
- Extend Bill Lee Act credits to electronic mail order houses that create at least 250 jobs in tiers one and two, effective January 1, 2000.
- Extend Bill Lee Act credits to customer service centers in tiers one and two, effective January 1, 2000.
- Allow annual refund of 6% sales taxes paid on capitalized machinery and equipment sold to businesses eligible for Bill Lee Act credits and located in tier one or two, effective January 1, 2000.
- Give a more favorable tier designation to small counties, effective January 1, 2000.
- Close loopholes in definition of development zones, effective August 1, 1999.
- Allow a 25% credit for contributions to nonprofits for capital projects within development zones, effective January 1, 2000.
- Allow a credit for rehabilitating or constructing affordable housing, effective for new projects beginning January 1, 2000, and sunsets on January 1, 2006.
- Allow all Bill Lee Act credits to be taken against insurance premiums tax, effective January 1, 1999.
- Require businesses to provide health insurance and meet environmental, safety, and health standards in order to qualify for Bill Lee Act credits effective January 1, 2000.
- Eliminate the $75 application fee for Bill Lee Act credits in tiers one and two and increase the fee to $500 per credit in other tiers, with a cap of $1,500 per applicant, effective September 3, 1999.
- Require applicants for Bill Lee Act credits to provide additional information to enable the Department of Commerce to evaluate the effectiveness of the credits in providing employment to residents of development zones, effective September 3, 1999.
- Require taxpayers to include with their tax returns the information that they must generate under current law to establish eligibility for the Bill Lee Act credits effective January 1, 2000.
- Clarify definitions of industries covered by Bill Lee Act, effective immediately, and clarify sales tax refunds for sales of fuel to interstate air carriers, effective October 1, 1999.
- Provide that research and development credit will not expire when the corresponding federal credit expires, effective January 1, 1999.

- Require projects to obtain an environmental certification in order to qualify for funding from the Industrial Development Fund (Building Renovation Fund), effective August 4, 1999.
- Require the Department of Commerce to support reasonable efforts to reduce interstate competition in luring businesses from one state to another.
- Increase fees paid to the Department of Environment, Health, and Natural Resources for brownfields agreements applied for after August 4, 1999. (CA)

Township Hospitals

S.L. 1999-377 (HB 279) authorizes township hospitals that operate under pre-1983 law to levy additional taxes after a referendum. (Township hospitals are considered public hospitals under G.S. 150-39.) The act provides that a petition signed by 200 residents of the township may be presented to the governing body of a county in which a township is located requesting that the annual tax for the maintenance, operation, and improvement of the township's public hospital continue to be levied after the expiration of the tax imposed under the pre-1983 law. The tax may not exceed 1/25 of one cent on the dollar for no longer than 30 years and must be used for bonds for the maintenance and improvement of the hospital.

The act became effective August 4, 1999. (MS)

Expand Municipal Service Districts

S.L. 1999-388 (SB 772). See **Local Government**.

Modify Historic Rehabilitation Credit

S.L. 1999-389 (SB 251) modifies the tax credit for rehabilitating income-producing historic property, by allowing a pass-through entity, such as a partnership, limited liability company, or Subchapter S corporation, to allocate the credit among any of the entity's owners. The act also adds provisions to recapture the credit if the taxpayer is required to recapture the credit under federal law, or if a partner or owner disposes of its interest in the pass-through entity. This change is effective for taxable years beginning on or after January 1, 1999.

In addition, the act requires corporations that are required to pay federal income tax estimated payments by electronic funds transfer (EFT) to pay State income tax estimated payments by EFT. This change is effective for taxable years beginning on or after January 1, 2000. (CA)

1999 Fee Bill

S.L. 1999-413 (HB 1289) sets the tax rates for the public utility regulatory fee and sets and expands the insurance regulatory fee.

Public Utility Regulatory Fee Rate. The act sets the public utility regulatory fee rate at 0.09% for the 1999-2000 fiscal year. This rate is the same as the rate that was in effect for the 1997-1998 fiscal year. The act also sets the special public utility regulatory fee imposed on the North Carolina Electric Membership Corporation at $200,000, effective for the 1999-2000 fiscal year.

Insurance Regulatory Fee. The act sets the insurance regulatory charge at 7% for the 1999 calendar year, an increase from the 6% rate in effect for the 1998 calendar year. In addition to the rate increase, the act imposes the insurance regulatory charge on health maintenance organizations (HMO's) and medical service organizations that were formerly exempt. This change is effective January 1, 2000. (MH)

Pension Tax Withholding

S.L. 1999-414 (HB 1466) requires a person paying pensions, annuities, and deferred compensation to withhold North Carolina individual income tax from the payments unless the recipient elects not to have the tax withheld. This change does not apply to income that is exempt from tax, including federal, State, and local retirees who are exempt from State income tax under various court decisions.

This section becomes effective January 1, 2001. (CA)

Code Update/Criminal Deadline/Research

S.L. 1999-415 (HB 1476) makes a number of changes relating to tax law.

Definition of "Internal Revenue Code" Used in State Law. The act rewrites the definition of the Internal Revenue Code (IRC) used in State tax law to change the reference date from September 1, 1998 to June 1, 1999. Under this change, any recent amendments to the Internal Revenue Code will become applicable to the State tax code to the extent that State tax law tracks federal tax law. The act also designates a portion of the revenue derived from updating the IRC definition to fund four new tax research positions in the Department of Revenue. This section became effective August 5, 1999.

Statute of Limitations for Failure to Comply with Tax Laws. The act changes the State statute of limitations from three years to six years for the prosecution of the willful failure to comply with the State's tax laws. This change conforms State law to federal law. This section of the act is effective December 1, 1999 for cases where the three-year statute of limitations has not already expired.

Protest Period. The act increases, from one year to three years, the amount of time a taxpayer has to protest the amount of tax owed. This section becomes effective for taxes paid on or after January 1, 1999.

Performance Audit of Department of Revenue. The act directs the State Auditor to conduct a performance audit of the Department of Revenue. The audit is to address technology issues, internal organization, budgeting and fiscal management, staffing, and other issues. This section became effective August 5, 1999. (MW)

Electronic Payment/Information Technology

S.L. 1999-434 (SB 222). See **Technology**.

No Sales Tax Fee/Other Changes

S.L. 1999-438 (SB 1112) makes numerous tax law changes.

Reduce/Expand Privilege Tax on Loan Agencies. The act reduces the annual privilege tax on loan agencies from $750.00 to $250.00. In addition, the act expands the scope of the tax to include pawnbrokers and check cashers. This section became effective July 1, 1999.

Repeal Sales Tax Registration Fee. The act repeals the one-time $15.00 registration fee retailers and wholesalers must pay when registering with the Department of Revenue for sales and use tax purposes. The effect of this change is that the Department of Revenue will now be able to handle registrations electronically. This section became effective January 1, 2000.

Repeal Sales Tax on Medical Equipment and Sundries. The act exempts durable medical equipment and medical sundries from sales tax. To qualify, the equipment and sundries must be eligible for coverage under Medicare and Medicaid and must be purchased with a prescription or certificate of medical necessity. This section becomes effective October 1, 1999.

Exempt All Prescription Drugs from Sales Tax. Under this portion of the act, physicians and other medical professionals who buy drugs to administer to their patients, and State hospitals (other than University North Carolina hospitals) are exempted from paying sales and use tax on prescription drugs. (Note: other prescription drugs, including prescriptions, drugs purchased by the University North Carolina hospitals, drug samples distributed by the manufacturer, and drugs purchased for use in the commercial production of animals, are either exempt from sales and use tax or the tax is refundable.) This section becomes effective October 1, 1999.

Repeal Sales Tax Exemption for Traded-In Items. The act repeals the sales tax exemption for certain traded-in items, thus making those items subject to full State and local sales tax. This section becomes effective October 1, 1999.

Repeal Unconstitutional Sales Tax Provisions. The act repeals two sales tax provisions that may be unconstitutional. First, it repeals the requirement that a nonprofit corporation must be chartered in North Carolina in order to claim an exemption from collecting sales tax on items sold as a part of an annual fundraiser. Secondly, it repeals the sales tax exemption for sales of paper, ink, and other tangible personal property to commercial printers and publishers for use in free publications that contained advertising of a general nature. Under the prior law, the sales tax exemption did not apply to guides with specialized content, such as real estate guides. The effect of repealing the exemption is that supplies sold for all free publications will be subject to tax on a uniform basis. Both sections become effective October 1, 1999.

Airport Authority Sales Tax Refunds. The act entitles all local airport authorities created by the General Assembly to receive sales tax refunds. This section became effective July 1, 1999.

Tax Penalty Assessment Changes. The act makes several changes to tax penalty and assessment rules. First, the act authorizes the Secretary of Revenue to waive bad check penalties in the same manner as other penalties are waived. Second, the act conforms the negligence penalty for large corporate income tax deficiencies to other large tax deficiencies. A 25% negligence penalty will be triggered for corporate income tax deficiencies when the corporate taxpayer understates its tax liability by an amount equal to or greater than ¼ of its actual tax liability. Finally, the act modifies the tax refund time limitations to provide that when a taxpayer that is under investigation by the Department of Revenue voluntarily waives the time limit for assessments, the time limit during which the taxpayer may request a refund is automatically extended as well. The tax penalty changes are effective October 1, 1999, and the assessment changes are effective August 10, 1999.

Special Mobile Equipment Changes. The act allows untaxed (dyed) diesel fuel to be used in special mobile equipment (equipment that is not designed or used primarily for the transportation of persons or property), effective October 1, 1999. The act allows a quarterly refund for tax paid on any taxed (clear) motor fuel use to operate special mobile equipment, effective for taxes paid on or after January 1, 1999. The act also increases the registration fee for special mobile equipment from $20.00 to $40.00, effective January 1, 2000. Finally, the act expands the maximum width of special mobile equipment from 96 inches to 102 inches, effective August 10, 1999.

Miscellaneous Tax Law Changes. The act also makes the following minor tax law changes:

- Requires that the individual income tax return contain a line authorizing a contribution to the Political Parties Financing Fund, effective August 10, 1999.
- Clarifies the definition of a utility for sales tax purposes effective August 10, 1999.
- Provides that sales and use taxes do not apply to tangible personal property that a merchant manufactures or purchases for resale but then withdraws from inventory and donates to a governmental entity, effective October 1, 1999.
- Increases the amount of the service charge that may be added to a restaurant patron's bill without being subject to sales tax, effective October 1, 1999.

- Authorizes the Department of Revenue to share information about excise taxes on tobacco, alcohol, and unauthorized substances with law enforcement officials, effective August 10, 1999.
- Repeals the requirement that bulk end users and retailers of undyed diesel fuel obtain a motor fuel tax license, and clarifies that a motor fuel supplier is allowed a discount of the tax due only if the tax is paid on time, effective August 10, 1999.
- Repeals the requirement that a bonded importer of motor fuel was required to obtain an import confirmation number, effective August 10, 1999.
- Authorizes the Department of Revenue to use information in the State Directory of New Hires to administer tax collection, effective August 10, 1999. (MH)

Tax Lien Advertisement and Collection

S.L. 1999-439 (HB 120) makes several changes to the procedures relating to property tax collection. The act provides that when real property is transferred by a listing owner after January 1, any newspaper advertisements for tax liens must be in the name of the person to whom the property was transferred, and before the advertisement is published, the tax collector must mail a notice to both the listing owner and the person to whom the property was transferred. Finally, the act allows foreclosure proceedings to begin 30 days after the tax liens are advertised, rather than waiting six months as required under prior law.

The act becomes effective January 1, 2001. (MH)

Unclaimed Property Act

S.L. 1999-460 (SB 244). See **Property, Trusts, and Estates**.

Bonds and Notes

Nonprofit Water Corporation Loans

S.L. 1999-213 (SB 878) allows certain nonprofit water corporations to apply for and receive a loan from the Drinking Water Treatment Loan Fund. To receive a loan, the nonprofit water corporation must meet all of the following conditions:

- Be incorporated as a nonprofit corporation solely for the purpose of providing community water, or community water and wastewater.
- Be eligible for a federal loan or grant from the Rural Utility Services Division.
- Obtain Local Government Commission approval.

The act became effective June 25, 1999. (MS)

County Bonds for Landbanking

S.L. 1999-378 (HB 1084). See **Local Government**.

Adjust Highway Bond Maturity

S.L. 1999-380 (HB 1471) extends the maturity date of the 1996 Highway Bonds from 2013 to 2020 to reflect the change in the estimated completion date of the Highway Trust Fund Projects. These bonds were issued in 1996 in order to expedite certain highway projects that would otherwise be funded from the Highway Trust Fund only when sufficient revenues were

available. The completion of these projects was estimated to occur at the end of 2013; however, it has now been determined that these projects may not be completed before 2020.

The act became effective August 4, 1999. (MS)

Authorize Public Hospital Debt

S.L. 1999-386 (HB 1120) authorizes two additional forms of capital financing for public hospitals: installment purchase financing and revenue anticipation bonds.

Installment purchase financing will allow public hospitals to finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the person or entity financing the purchase. One type of installment financing is a certificate of participation. The local government unit that owns the hospital must approve any installment financing contract that the hospital signs. The local government unit must approve the contract unless it determines that the contract would adversely affect its credit worthiness, an anticipated bond issuance, or an existing bond order.

Revenue anticipation bonds will allow public hospitals to borrow money to pay expenses in the current fiscal year and to repay the borrowed funds with nontax revenues to be collected later in the fiscal year. A public hospital may not issue revenue anticipation bonds unless the local government unit that owns the facility and the Local Government Commission approve the issuance.

The act became effective August 4, 1999. (CA)

Fees

Nurses Aide II Registry Fees

S.L. 1999-254 (SB 843) raises the annual registration fee for Nurse Aide II's from $5.00 to $12.00 and clarifies that the fee does not apply to Nurse Aide I's.

The act became effective July 2, 1999. (MS)

Landscape Architects Exam Fee

S.L. 1999-315 (HB 1237) allows the North Carolina Board of Landscape Architects (Board) to charge applicants for licensure the actual cost of the exam services when the Board uses a testing service for preparation, administration, or grading of the examinations.

The act became effective July 15, 1999. (MS)

Physical Therapy Fees

S.L. 1999-345 (SB 799) authorizes the North Carolina Board of Physical Therapy Examiners to increase various fees.

The act became effective July 22, 1999. (MS)

Cosmetology Fees

S.L. 1999-348 (SB 29) allows the North Carolina Board of Cosmetic Art Examiners (Board) to charge the actual cost of preparation, administration, and grading of examinations for cosmetologists, apprentices, manicurists, estheticians, or teachers. The act also reauthorizes the Board to adopt rules for cosmetic art schools.

The act became effective September 1, 1999. (MS)

Boat Registration Fees

S.L. 1999-392 (SB 499) authorizes the Wildlife Resources Commission to increase the application fees for boat identification numbers. The act also provides that a portion of the fees must be used for boating access area acquisition, development, and maintenance.

The act became effective January 1, 2000, and applies to fees collected on or after that date. (MS)

Insurance Fee Repeals and Increases

S.L. 1999-435 (SB 562) repeals the schedule of fees paid to the Commissioner of Insurance and modifies the following insurance fees:

- Increases the annual license fee for all insurance companies, except domestic farmer's mutual assessment fire insurance companies, fraternal orders, and mutual burial associations, from $500 to $1,000. The act also provides that these fees are nonrefundable.
- Increases the risk retention group renewal fee from $500 to $1,000.
- Increases the registration renewal fee for domestic land mortgage companies or title companies that do business under the Title Insurance Companies and Land Mortgage Companies Issuing Collateral Loan Certificates from $500 to $1,000.
- Increases the license renewal fee for a Health Maintenance Organization from $500 to $1,000. The act also repeals the $100 filing fee for the annual report.

The act also provides that funds received from insurers for the actual expenses incurred by the Department of Insurance (Department) for the examination of an insurer's records or assets will be used by the Department to offset those expenses.

The act became effective August 10, 1999. (MS)

Major Pending Legislation

Gambling Boats Regulated

HB 19 prohibits "casino boats" from operating in North Carolina. The bill defines a casino boat as a vessel that leaves and returns to a port in North Carolina for the purpose of gambling without making an intervening stop in another state or country. To meet the requirements for an intervening stop, the boat must dock at a port outside the boundaries of North Carolina for at least six hours and allow passengers to disembark for tourist-related activities. A person who violates this law would be guilty of a Class A1 misdemeanor.

Also under HB 19, gambling voyages that cannot be prohibited under federal law (those voyages making intervening stops) would be regulated. These voyages must meet the Safety of Life at Sea (SOLAS) standards set by the United States Coastguard and all passengers must be at least 21 years of age. The bill also creates tax obligations for operators of these voyages including a privilege license tax and would require the withholding of income tax for North Carolina residents if the resident's winnings exceed $600. (MS)

Reduce Pension Tax

HB 1325 would raise the amount of private pension income that can be deducted prior to the calculation of North Carolina income tax. The bill also makes the income from all State and local government pensions, as well as income received from federal pensions, tax deductible. Retirement income received from other state or local pensions would be deductible to the extent

that the other state would not subject to individual income tax the equivalent amount received under a North Carolina State or local government retirement plan, or up to $4,000, whichever is greater. (MS)

Renewable Energy Manufacturers Credit

HB 1473 allows a corporation that constructed a facility in North Carolina for the manufacture of renewable energy equipment to receive a corporate income tax credit equal to 25% of the installation and equipment costs paid during the taxable year. Renewable energy equipment is defined as biomass equipment, solar electric or thermal equipment, and wind energy equipment. (MS)

1999 North Carolina Lottery

SB 21 would establish a statewide lottery subject to voter approval. The bill creates a State Lottery Commission to administer the lottery and provides for the establishment and regulation of lottery games. The bill also establishes a Lottery Fund (Fund) and sets out the percentages of the fund to be used for administrative expenses and prizes. After these expenses, 20% of the remainder of the Fund would be allocated to the Clean Water Revolving Loan and Grant Fund. All remaining funds would be allocated for public education, including the establishment of an Education Improvement Scholarship Program. Finally, the bill directs that winnings that are federally taxable are subject to a 7% State income tax. (MS)

Review Tax Credits Periodically

SB 208 repeals all tax credits in Chapter 105 of the General Statutes (Taxation). The bill also recommends that any new or re-enacted tax credits sunset after three years. Finally, the bill provides that it is the General Assembly's intent to review all tax credits and renew those that serve a valid public purpose. (MS)

Bonds for Higher Education

SB 912 provides that the State will issue bonds to help pay for new buildings and renovation and repair for the constituent and affiliated institutions of The University of North Carolina (UNC) and the State's community colleges. The Senate version would authorize the State to issue security interest bonds to finance $2.7 billion of capital facilities for UNC and $300 million for capital facilities for community colleges. The bonds would be secured by a security interest of the capital facilities being financed and would not pledge the full faith and credit or the taxing power of the State. The bonds could be issued without voter approval. The House version would authorize the State to issue general obligation bonds to finance $1 billion of capital facilities for UNC and $200 million for capital facilities for community colleges. The bonds would be subject to approval by the voters.

Both versions of the bill authorize the UNC Board of Governors to issue special obligation bonds to finance capital facilities for constituent and affiliated institutions of the University of North Carolina. Receipts other than tuition or appropriations would secure these bonds from the General Fund. Finally, both versions of the bill prohibit any State-funded construction project from being named after a member of the General Assembly or a member of the Council of State while that person is holding office. (MS)

Various Local Option Sales Tax Bills

Numerous local option sales tax bills were introduced in both the House and Senate during the 1999 Regular Session. The bills differed in the rate of tax, whether or not the levy of a tax would require voter approval, whether or not the tax would be levied on food, and whether or not the tax would sunset after a specified period of time. The bills also varied in the proposed use of the tax; however, most bills directed that the additional tax be used for schools. (MS)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. 2.1(5) (HB 163, Sec. 2.1(5)) authorizes the Legislative Research Commission to study taxation and economic development issues, including consolidated income tax returns by affiliated corporations, the impact of military bases on public services and taxes, and a capital incentive program for tourism.

This section became effective July 1, 1999. (MS)

Study Property Tax Exemptions for Nonprofits

S.L. 1999-191, Sec. 3 (SB 325, Sec. 3) directs the Legislative Research Commission to conduct a comprehensive study of property tax exemptions for nonprofit institutions. The act directs the Legislative Research Commission to make a final report of its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly.

The act becomes effective July 18, 1999. (MS)

New Independent Studies/Commissions

North Carolina Tax Policy Commission

S.L. 1999-395, Part III (HB 163, Part III) establishes the North Carolina Tax Policy Commission (Commission) to study and examine the State and local tax structure. The Commission consists of 15 members, including legislators, representatives from local government, businesses, and nonprofit charitable organizations, tax experts, senior citizens, and the public. The Commission will be responsible for evaluating the current State and local tax base, examining all current tax preferences, reviewing tax changes made in the last 10 years, examining the impact of changing federal-State-local relationships on funding among levels of government and the impact on tax policy, and examining the impact of changing city/county service systems and the impact on local tax policy. The Commission may make an interim report to the 2000 Regular Session of the 1999 General Assembly and must make a final report of its findings and recommendations by March 1, 2001.

This section became effective July 1, 1999. (MS)

Referrals to Existing Commissions/Committees

Study Homestead Exemption

S.L. 1999-237, Sec. 6.2 (HB 168, Sec. 6.2) directs the General Assembly to study options for providing homestead property tax relief to low-income elderly and disabled citizens. The Speaker of the House of Representatives and the President Pro Tempore of the Senate are to designate the appropriate committee to conduct the study. The committee must report its findings and recommendations to the General Assembly by May 1, 2000.

This section became effective July 1, 1999. (MS)

Study Regulation and Practice of Investment Advisers

S.L. 1999-395, Sec. 13.1(1) (HB 163, Sec. 13.1(1)) directs the Revenue Laws Study Committee (Committee) to study the regulation and practice of investment advisers. The Committee may report prior to the convening of either the 2000 Regular Session of the 1999 General Assembly or the 2001 General Assembly.

This section became effective July 1, 1999. (MS)

Study Shareholder Protection Act & Business Corporation Act

S.L. 1999-395, Sec. 13.1(2) (HB 163, Sec. 13.1(2)) directs the Revenue Laws Study Committee to study any necessary changes to the Shareholder Protection Act and the Business Corporation Act. The Committee may report prior to the convening of either the 2000 Regular Session of the 1999 General Assembly or the 2001 General Assembly.

This section became effective July 1, 1999. (MS)

Chapter 18 Technology

Brenda Carter (BC), Walker Reagan (WR)

Enacted Legislation

Computerized Evidence Amendments

S.L. 1999-131 (SB 1021), as amended by S.L. 1999-456, Sec. 47 (HB 162, Sec. 47). See **Civil Law and Procedure.**

Allow Electronic/Telephonic Proxies

S.L. 1999-138 (SB 775). See **Commercial Law.**

Electronic Proxies for Nonprofits

S.L. 1999-139 (SB 774). See **Commercial Law**.

Insurance Claims Payments/Y2K

S.L. 1999-184 (SB 839). See **Insurance.**

Unsolicited Electronic Bulk Mail

S.L. 1999-212 (SB 288) as amended by S.L. 1999-456, Sec. 8 (HB 162, Sec. 8). See **Civil Law and Procedure.**

Court Information Technology Fund

S.L. 1999-237, Sec. 17.15 (HB 168, Sec. 17.15). See **State Government.**

Year 2000 Liability Limitations

S.L. 1999-295 (SB 1005). See **Civil Law and Procedure.**

Year 2000 Consumer Protection Act

S.L. 1999-308 (SB 1074). See **Civil Law and Procedure.**

NC Purchasing Opportunities

S.L. 1999-417 (SB 283). See **State Government.**

Electronic Payments/Information Technology Management

S.L. 1999-434 (SB 222) permits payment of amounts owed to State and local governments by electronic means, and centralizes State government information technology management under a new Office of Information Technology Services.

Electronic Payments. The act directs the State Controller to establish policies that make State agency accounts receivable subject to electronic payment and amends the statewide cash management plan to require State agencies to accept electronic payment to the maximum extent possible, consistent with sound business practices. "Electronic payment" is defined as payment by charge card, credit card, debit card, or electronic funds transfer. Fees associated with processing electronic payments to State agencies may be paid out of the General Fund and Highway Fund or may be paid by the debtor. The act also authorizes a unit of local government or public authority to accept electronic payment for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. Any policies for electronic payment that will apply to debts owed the office of a clerk of superior court or magistrate will require approval of the Administrative Officer of the Courts. The debtor or local government unit may be required to pay the processing fee. The account number for electronic payment is confidential information and may not be disclosed under the Public Records Act.

Information Technology Management. This portion of the Act does four basic things:

- Implements procurement reform for all State information technology purchases through a single information technology office.
- Implements a business approach to information technology management by developing a portfolio-based program of information technology.
- Improves the management of all information technology assets by developing a statewide management approach.
- Improves financial reporting and accountability of information technology investments and expenditures.

"Information technology" is defined as electronic data processing goods and services, telecommunications goods and services, computer hardware, software, and services related to computer systems.

The act creates the Office of Information Technology (Office) as a division of the Department of Commerce, to be administered by the State Chief Information Officer. The Office will provide for stronger central management of State government information technology, which should result in enhanced accountability of information technology expenditures, cost-effective investments, increased efficiencies, and clarified areas of responsibility. The powers and duties of the Office include:

- Procuring all information technology for all State agencies, except UNC and the General Assembly.
- Submitting for approval by the Information Resources Management Commission (IRMC) all rates and fees for shared State government-wide technology services.
- Submitting for approval by the IRMC recommended State government-wide, enterprise-level policies for information technology.
- Developing standards, procedures, and processes to implement IRMC policies.
- Implementing and managing information technology portfolio-based management of State information technology resources.
- Implementing and managing the information technology enterprise management effort of the State government.

The Office is to conduct and maintain an inventory of each State agency's information technology assets.

State agencies are prohibited from proceeding with an information technology project until the project is certified by the IRMC. Agencies are also required to go through the Office for information technology purchases. The Board of Awards must review most information

technology purchases before the contract is awarded, as are other purchases administered by the Department of Administration.

The act expands the membership of the IRMC to include the President of The University of North Carolina, or designee, as a voting member and the State Chief Information Officer as a non-voting member. An independent staff of up to five employees is authorized for the IRMC.

The Joint Select Committee on Information Technology (see below) is directed to study the appropriate placement in State government of a centralized agency to manage State government-wide information technology.

The Office of Information Technology provisions become effective January 1, 2000. The remainder of the act became effective August 10, 1999. (WR)

Studies

New/Independent Studies/Commissions

Joint Select Committee on Information Technology Created

S.L. 1999-395, Sec. 22 (HB 163, Sec. 22) establishes the Joint Select Committee on Information Technology (Committee). It is authorized to review current information technology that impacts public policy, including electronic data processing and telecommunications, software technology, and information processing. The goals and objectives of the Committee include development of electronic commerce in the State and coordination of the use of information technology by State agencies in an efficient and effective manner. The Committee will look at the technological infrastructure of State government, information technology governance, policy, and management practices. The Committee is authorized to study, evaluate, and recommend changes proposed for future development of the State's information highway system and changes to State laws relating to electronic commerce, and to recommend action regarding any reports received by the Committee. The Committee may consult with the Information Resource Management Commission (IRMC) on statewide technology strategies and initiatives, and is authorized to review all legislative proposals and other recommendations of the IRMC.

The Committee will consist of 14 members, and will meet quarterly and upon the call of the cochairs. The Committee is required to report by March 1 of each year to the Appropriations Committees of the House of Representatives and the Senate concerning Committee activities, findings and recommendations.

The act is effective July 1, 1999. (BC)

Use of Personal Information in State Databases

S.L. 1999-395, Part XVI (HB 163, Part XVI) directs the Joint Select Committee on Information Technology (Committee) to study the extent to which an individual's personal information contained in State databases, including the Division of Motor Vehicles database, is accessible and used by nongovernmental agencies. The Committee is authorized to report to the 2000 Regular Session, and is directed to make a final report to the 2001 General Assembly upon its convening.

The act became effective August 5, 1999. (BC)

Technological Infrastructure Study

S.L. 1999-237, Sec. 22.2 (HB 168, Sec. 22.2) directs the Joint Select Committee on Information Technology (Committee) to study, evaluate, and recommend changes in the current technological infrastructure of the Department of the Secretary of State and the Department of the State Treasurer. The Committee is also required to study, evaluate, and recommend the

level of audit staff need in the Office of the State Auditor to provide for adequate coverage of computer applications and installation in State government. The Committee shall report by April 1, 2000 to the Appropriations Committees of the Senate and House of Representatives.

The act became effective July 1, 1999. (BC)

Information Technology Management

S.L. 1999-434 (SB 222) directs the Joint Select Committee on Information Technology to study where in State government a centralized agency to manage State government-wide information technology should be located. (WR)

The act became effective August 10, 1999.

Referrals to Departments, Agencies, Etc.

Cooperation in Education Information Technology

S.L. 1999-237, Sec. 8.34 (HB 168, Sec. 8.34) directs the Education Cabinet to submit a report to the General Assembly specifying functions involving information technology systems, procedures and procurements that might be exercised cooperatively among community colleges, the Department of Public Instruction, local school boards, and constituent institutions of The University of North Carolina system. The report is to contain recommended approaches to facilitate collaboration in technology functions, and any necessary legislative proposals.

This section became effective August 5, 1999. (BC)

Information Technology Cost Reporting to General Assembly

S.L. 1999-237, Sec. 22.1 (HB 168, Sec. 22.1) requires that each executive branch agency and the Administrative Office of the Courts report to the Information Resource Management Commission (IRMC) an estimate of the agency's anticipated spending on information technology costs for the 1999-2000 fiscal year. The report must be made on or before January 1, 2000, and must include the number of the agency's permanent State-funded information positions. On or before February 1, 2000, the IRMC will report a summary of these agency estimates to the House and Senate Standing Committees on Information Technology and to the Directors of the Information Services and Fiscal Research Divisions of the General Assembly.

On or before April 10, 2000, each executive branch agency and the Administrative Office of the Courts must report on the agency's actual information technology costs for the previous quarter. By April 20, 2000, the IRMC must report a summary of these costs, along with any suggestions it may have for improved information services to the agencies. All cost reports will be submitted to the House and Senate Standing Committees on Information Technology and to the Directors of the Information Services and Fiscal Research Divisions of the General Assembly. Subsequent cost reports will be required on a quarterly basis.

On or before October 1, 1999, the IRMC is required to establish report formats and contents guidelines to be used by the agencies in providing the required information. For purposes of the reports, information technology costs mean all expenses directly related to data processing and telecommunications, including expenses incurred for permanent, State-funded technical positions.

This section is effective July 1, 1999 and will expire on April 20, 2001. (BC)

Chapter 19 Transportation

Brenda Carter (BC), Esther Manheimer (EM), Giles Perry (GSP)

Enacted Legislation
Airports

Global Transport Obligations Maturity Dates Extended

S.L. 1999-237, Sec. 27.16 (HB 168, Sec. 27.16) extends from September 1, 1999 to September 1, 2004 the final maturity dates for obligations of the Global TransPark Authority to the Escheat Fund.

This section became effective July 1, 1999. (GSP)

Department of Transportation

Highway Contract Bonding Requirements

S.L. 1999-25 (SB 51) amends the law governing highway small project bidding. The maximum size of Highway Fund or Highway Trust Fund projects for which the Board of Transportation may solicit three or more informal bids from Small Business Enterprises and award contracts to the lowest responsible bidder is raised from $300,000 to $500,000. The act also raises from $500,000 to $800,000 the limit on projects for which the Department of Transportation is authorized to use informal bid procedures.

The act became effective April 16, 1999. (BC)

Repeal DOT Bermuda Grass Prohibition

S.L. 1999-29 (SB 27) repeals G.S. 136-18.1, which restricted the use of Bermuda grass along certain sections of the highway without written consent of the abutting landowner. Bermuda grass could only be used "in long sections of woodland or wasteland sufficiently distant from cultivated areas", and DOT and its employees were required to use "every reasonable effort" to eliminate Bermuda planted on the shoulders of highways through cultivated farm areas.

The act became effective April 11, 1999. (BC)

Design-Build Transportation Construction Contracts

S.L. 1999-237, Sec. 27.3 (HB 168, Sec. 27.3) authorizes the Department of Transportation (Department) to award up to three contracts annually for construction of transportation projects on a design-build basis. The Department may use design-build upon a determination that delivery of the projects must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures. Prior to awarding a design-build contract, the Secretary of Transportation is required to report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations on the nature and scope of the project and the rationale for awarding the contract.

The act became effective July 1, 1999. (BC)

Recycled Materials in Road Maintenance

S.L. 1999-237, Sec. 27.4 (HB 168, Sec. 27.4) directs the Department of Transportation to use recycling technology in road and highway maintenance and to conduct additional research on the use of recycled materials in road construction and maintenance. The use of recycling technology must be consistent with economic feasibility and applicable engineering and environmental quality standards. The Joint Legislative Transportation Oversight Committee is designated as one of the agencies to receive an annual report prepared by the Division of Pollution Prevention and Environmental Assistance on the amounts and types of recycled materials that were specified or used in contracts during the previous fiscal year.

The act became effective July 1, 1999. (BC)

State Trees and Flowers on DOT Right-of-Way

S.L. 1999-237 (HB 168, Sec. 27.22) requires the Department of Transportation (Department) to develop and implement a plan to plant the State tree, the pine, including the loblolly pine, and the State flower, the dogwood, along the State's roads and highways in the Department's rights-of-way. The Department must submit a plan to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Transportation Oversight Committee by October 1, 1999, and the Department must begin implementation of the plan by January 1, 2000.

This section became effective July 1, 1999. (EM)

Amendment to the Transportation Equity Formula to Exempt Federal Discretionary Funding

S.L. 1999-237, Sec. 27.19 (HB 168, Sec. 27.19) amends the regional equity distribution formula for Transportation Improvement Plan construction funds to exempt federal competitive and discretionary grants.

This section became effective July 1, 1999. (GSP)

Equity Allocation Distribution Study and Report

S.L. 1999-237, Sec. 27.20 (HB 168, Sec.27.20) directs the Secretary of Transportation (Secretary) to submit a report to the General Assembly, on or before December 1, 1999 of all allocations, obligations, and actual yearly expenditures for each transportation distribution region from fiscal year 1989-90 to fiscal year 1997-98. On or before December 1, 2000 and every two years thereafter the Secretary shall update the report. The Secretary is directed to submit a plan to correct any imbalances in the formula revealed by the report. In addition, the Secretary is directed to study and report by December 1, 2000 on proposals to separately fund projects with a significant economic or geographic impact.

This section became effective July 1, 1999. (GSP)

Visitor Centers Exempt from Umstead Act

S.L. 1999-237, Sec. 27.23A (HB 168, Sec. 27.23A) adds a new exemption to G.S. 66-58(b), the Umstead Act. Under G.S. 66-58(a), it is unlawful for the State government to engage in various types of business activities in competition with the citizens of the State. The act adds the Department of Transportation (Department) or any nonprofit lessee of the Department to the list of groups that are exempt from G.S. 66-58(a) but only for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department.

This section became effective July 1, 1999. (EM)

Adjust Highway Bonding Requirements

S.L. 1999-380 (HB 1471) See **Taxation.**

ROW Plans and TIP Allocations

S.L. 1999-422 (SB 233) provides for the electronic transmission and filing of right-of-way plans by the Department of Transportation, with the approval of the county in which the right-of-way plans are to be filed. This section becomes effective January 1, 2000.

The act also amends the statute regarding the distribution formula for funds expended on Intrastate System and Transportation Improvement Program projects. The act provides that any funds allocated in a specific year to a transportation division and under-obligated or over-obligated be factored into the next year's allocation to the division. The Secretary of Transportation is required to annually calculate the amount of funds allocated in that year to each transportation division, the amount of funds obligated, and the amount the obligations exceeded or were below the allocation. The tentative percentage share of each division will then be adjusted to account for any differences between allocations and obligations reported for the previous year, and the adjusted amount will be used to aid the Department in expending in a distribution region an amount equal to that region's tentative percentage share of funds. The adjustment to the target amount is to be allocated by division.

The act became effective August 5, 1999. (BC)

Motor Vehicles

Local Photo Enforcement

S.L. 1999-182 (HB 514) as amended by S.L. 1999-456 (HB 162, Sec. 4) See **Local Government.**

Motor Vehicle Occupant Restraints

S.L. 1999-183 (SB 65) repeals obsolete provisions, updates statutes related to motor vehicle occupant restraint safety, and rewrites the law regarding safety restraints to provide that all passengers under the age of 16 must be properly secured in a child passenger restraint system or seat belt.

Any child less than 5 years old and weighing less than 40 pounds must be properly secured in an appropriate child restraint system. If the vehicle has an active passenger-side front air bag, any child less than 5 years old and weighing less than 40 pounds must be properly secured in a rear seat, unless the restraint system is designed for use with air bags or the vehicle does not have a rear seat. This provision does not apply to persons who reach the age of four years old prior to October 1, 1999.

Violation of the child restraint law is an infraction and the maximum fine is $25 regardless of the number of children involved in the violation.

The act became effective October 1, 1999. (BC)

Permanent Plate Changes/Retired Highway Patrol Plates

S.L. 1999-220 (HB 486) authorizes the Division of Motor Vehicles (Division) to issue permanent registration plates for parade trailers owned by nationally chartered charitable

organizations and updates the permanent plate statute. It also authorizes the Division to issue special license plates for Retired Highway Patrol members, if the Division receives 300 applications.

The act became effective July 1, 1999. (GSP)

Increase Auto Insurance Coverage

S.L. 1999-228 (SB 756). See **Insurance.**

Disclosure of Personal Information in Motor Vehicle Records

S.L. 1999-237, Sec. 27.9 (HB 168, Sec. 27.9) forbids the Division of Motor Vehicles from disclosing personal information, such as names and addresses, for bulk distribution for surveys, marketing, or solicitations unless the person affected gives permission.

This section became effective July 1, 1999. (GSP)

Lose Control Lose Your License

S.L. 1999-243 (SB 57), as amended by S.L. 1999-387, Sec. 4 (HB 1154, Sec. 4). See **Education.**

Handicapped Parking Fines

S.L. 1999-265 (HB 143). See **Criminal Law**.

Activity Buses Stop – RR Crossings

S.L. 1999-274 (HB 1054) requires activity buses to stop at all railroad crossings. Under prior law, these buses only had to stop at certain active crossings.

The act became effective August 1, 1999. (GSP)

Recognize Federally Issued Licenses

S.L. 1999-276 (HB 1263) provides that a person between sixteen and eighteen years of age with a drivers license issued by the federal government may be issued an appropriate drivers permit under North Carolina's graduated drivers license program. The person may obtain a limited provisional license or a provisional license upon becoming a resident of this state, provided he or she has completed a drivers education program that meets state requirements. Upon parental certification that the driver has not been convicted of a moving violation in the preceding six months, the driver will be deemed to have held a limited provisional license or a provisional license in this State for each month the person held a license issued by the federal government.

The act became effective July 11, 1999. (BC)

"Kids First" Registration Plates

S.L. 1999-277 (SB 235) authorizes the Division of Motor Vehicles (Division) to issue special registration plates which may bear the phrase "Kids First" and a logo of children's hands. The plates, which will be developed if the Division receives at least 300 applications, will be subject to the regular motor vehicle registration fee and an additional fee of $25. A portion of

the additional fee will be transferred on a quarterly basis to the North Carolina Children's Trust Fund, which is used by the State Board of Education to fund abuse and neglect programs.

The act became effective July 1, 1999. (BC)

Motor Vehicles Trailer Amendments

S.L. 1999-281 (HB 1030) increases, from 4,000 to 6,500, the minimum weight of a trailer required to be equipped with rear lamps instead of reflectors. The act also exempts from motor vehicle registration a trailer drawn by a motor vehicle when the trailer is transporting "loaders" owned by a farmer or tenant.

The act became effective October 1, 1999. (GSP)

Unlawful Use of Drivers License

S.L. 1999-299 (HB 1022). See **Criminal Law.**

I.A.F.F. Registration Plates

S.L. 1999-314 (HB 1090) authorizes the Division of Motor Vehicles (Division) to issue a special plate to a member of the International Association of Fire Fighters, if the Division receives 300 applications.

The act became effective July 8, 1999. (GSP)

Emergency Traffic Ordinances

S.L. 1999-310, (SB 527) allows local authorities to adopt ordinances that would allow the preemption of traffic signals by police and fire department vehicles, ambulances, and rescue squad emergency service vehicles. This allows these vehicles to be equipped with a device that would send a signal to upcoming traffic signals. The device would cause the traffic signals to turn green by the time the emergency vehicle reaches the intersection. An ordinance would apply to signaling devices on city streets and State highways within the local government's boundaries.

The act became effective July 9, 1999. (EM)

University Health System/Judicial Plates

S.L. 1999-403 (SB 285) authorizes the Division of Motor Vehicles (DMV) to develop a special license plate bearing a phrase or insignia representing the University Health Systems of Eastern Carolina, and issue the special license plates for the cost of the plate plus an additional $25 fee. The first $10 of the additional fee would be credited to the Special Registration Plate Fund. The remaining $15 of the additional fee would go to the Collegiate and Cultural Attraction Plate Account and transferred quarterly to the Pitt Memorial Hospital Foundation, Inc., for use in the Children's Hospital of Eastern North Carolina. DMV must receive at least 300 applications for a special plate before it is issued.

This bill also authorizes DMV to issue special plates to Supreme Court Justices and Appeals Court Justices that bear the words "Supreme Court" and "Court of Appeals", respectively, and the State seal and a number designating seniority. Retired Justices may be issued special plates that bear the number of the member's position of seniority upon retirement. The bill makes other technical changes regarding special plates for members of the judiciary of North Carolina's lower courts.

The act became effective July 21, 1999. (EM)

Funeral Processions

S.L. 1999-441 (HB 247) codifies certain rules of the road regarding funeral processions. The act defines "funeral procession" as 2 or more vehicles accompanying the remains of a deceased person, or traveling to a funeral, in which the lead vehicle is: a State or local law enforcement vehicle or "other official vehicle" or displays an amber or purple flashing light, sign, pennant, flag, or other insignia furnished by a funeral home to indicate a funeral procession.

The rules for a funeral procession would be as follows:

- Each car in the procession must have its headlights and hazard lights on.
- The lead vehicle must comply with all traffic-control signals. But when the lead vehicle has crossed an intersection, the cars following may proceed through the intersection without stopping. Each driver, however, must use reasonable care toward any other vehicle on the road. A vehicle that isn't part of the funeral procession can't join it just to be able to go through a red light.
- Drivers in the procession must stay on the right side of the road and follow the car ahead as closely as is prudent.
- Cars in the procession shall yield right of way to various types of law enforcement and emergency vehicles.
- Cars in the procession shall follow the speed limit. They shall exercise reasonable care given existing conditions.
- Cars going in the opposite direction from the funeral procession may yield to the procession by slowing down or by stopping. But if the cars stop, they must pull off the road so that other traffic may proceed.
- A car going in the same direction as a funeral procession shall not pass unless there is an extra lane or more in which to pass.
- No car shall cross an intersection by going between the cars of a funeral procession, unless directed to do so by a person authorized to direct traffic.

The act contains language limiting liability for accidents. A violation of the rules would not be negligence *per se*. The act also protects any law enforcement officer or "other official designee," supervisor of the officer, funeral director or agent from liability for a death, personal injury, or property damage in a funeral process unless the death, injury or damage was proximately caused by the person's negligent act.

If the act's provisions conflict with any local ordinance, the ordinance prevails.

The act becomes effective December 1, 1999. (GSP)

Animal Lovers Special Plate

S.L. 1999-450 (HB 1246) authorizes the Division of Motor Vehicles to issue special registration plates to animal lovers. The plates, which may bear a picture of a dog and cat and the phrase "I Care", will be developed if the Division receives at least 300 applications for the plate. The plates will be subject to the regular motor vehicle registration fee and an additional fee of $20, and a portion of the additional fee will be transferred on a quarterly basis to the Department of Health and Human Services to create a Statewide program to promote the spaying and neutering of dogs and cats.

The act became effective August 10, 1999. (BC)

Motor Vehicle Technical Amendments

S.L. 1999-452 (HB 280) makes the following changes to the motor vehicle laws:

- Defines the term "crash".

- Amends the definition of "Gross Vehicle Weight Rating" to allow Division of Motor Vehicle (DMV) enforcement officers to use the license weight or total weight of a structurally altered vehicle when enforcing motor carrier safety regulations.
- Changes the definition for U-Drive-It passenger vehicles and creates a new definition for U-Drive-It vehicles
- Clarifies the definition of "personal recognizance." This change became effective August 10, 1999.
- Authorizes nonresidents to post bond to secure appearance for certain motor vehicle offenses. This change became effective August 10, 1999.
- Authorizes DMV to require a disabled person with a drivers license to present a medical certificate at an interval determined by DMV, instead of every year as previously required.
- Allows a Level 1 and Level 2 driver under the graduated drivers license system to have more than two supervising drivers, and requires only one of the supervising drivers to sign the driver's application for a permit or license. This change became effective August 10, 1999.
- Requires DMV to offer a hearing within 60 days to a person whose license is suspended without a preliminary hearing. It also removes the requirement that the hearing be held in the county in which the licensee resides.
- Prohibits covering numbers and stickers on license plates with any material that makes the numbers or sticker illegible. A violation of this offense would be punishable as an infraction.
- Allows DMV to accept electronic applications for registration plates, registration certificates, and certificates of title and to collect fees and penalties electronically.
- Requires DMV to maintain title records for 20 years. After 20 years, DMV would only be required to maintain a record of the last two owners.
- Removes the requirement that DMV must receive 300 applications for a military retiree plate before it can issue one.
- Changes the vehicle registration category for small daily rental trucks.
- Clarifies the authority of law enforcement officers to seize and detain property hauling vehicles that are found to be overweight, do not have proper registration plates, or are owned by a person who owes overload penalties, assessments, taxes, or penalties.
- Authorizes DMV to provide forms or procedures for submitting crash data (instead of paper forms), and deletes the term "accident" and substitutes the newly defined term "crash".
- Requires insurance companies to notify DMV within 20 working days when they terminate policies or issue new ones. However, a company does not have to notify DMV if the company is issuing a replacement policy. The section also requires companies with $25,000,000 or more in annual vehicle insurance premium volume to submit the notifications electronically. This section become effective October 1, 2000.
- Requires DMV to develop a plan to improve the collection and maintenance of proof of financial responsibility for newly licensed drivers classified as inexperienced operators and to submit the plan to the Joint Legislative Transportation Oversight Committee by December 1, 1999.
- Allows persons cited for emissions inspection violations to get their inspection done within 30 days, and avoid a penalty.
- Authorizes disclosure of motor fuel tax information to the International Fuel Tax Association, Inc.

Unless otherwise specified, the act became effective October 1, 1999. (GSP)

Notice of Sale in DWI Forfeiture

S.L. 1999-456, Sec. 11 (HB 160, Sec. 11) amends the law regarding driving while impaired (DWI) related forfeiture of a vehicle to require that notice of sale be given by first-class mail to the owner at the address shown on Division of Motor Vehicles records. This eliminates the option of sending such notice to "any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered."

The act became effective August 10, 1999. (BC)

Outdoor Advertising

Surry Billboards Ban

S.L. 1999-218 (SB 1140) bans new or replacement outdoor advertising from being erected on or after June 25, 1999. The ban applies to the portion of North Carolina Highway 752 and Unites States Highway 52 south of the airport forming a corridor through the foothills of Surry County past Pilot Mountain State Park.

The act became effective June 25, 1999. (EM)

Outdoor Advertising Control Act

S.L. 1999-436 (SB 254) amends various statutes regarding outdoor advertising. The bill:

- Allows the permit fee for directional signs to increase from a $20 initial fee to a $40 initial fee and from a $15 annual renewal fee to a $30 annual renewal fee. The bill also allows the permit fee for advertising structures to increase from a $60 initial fee to a $120 initial fee and from a $30 annual renewal fee to a $60 annual renewal fee.
- Allows the Department of Transportation (Department) to issue a stop work order if a permit has not been issued for the construction of the outdoor advertising. The stop work order must be prominently posted on the advertising structure. The Department may remove the outdoor advertising structure if the owner fails to stop construction of the outdoor advertising. The cost of removing the outdoor advertising will be assessed against the owner.
- Clarifies that the Department regulates outdoor advertising "adjacent to the right-of-way of the interstate or primary highway system," and that illegal outdoor advertising must be removed or made to conform to Department rules by the owner within 30 days of the Department issuing a notice of illegality. The owner must pay the cost of removal if the Department or its agent performs the removal.
- Requires that when the Department notifies a permit applicant, permit holder, or the owner of an outdoor advertising structure that the application is denied, permit revoked, or the structure is in violation of this Article, is must do so in writing by certified mail, return receipt requested and must include a copy of the applicable law and rules. If the Department fails to include a copy of the law and the rules then the time period during which a petitioner has to request a review hearing shall be tolled until the Department provides the required materials.
- Allows the Department to seek an injunction in the county where the outdoor advertising is located.
- Allows the Department to charge a fee of $200.00 for a selective vegetation removal permit.
- Makes technical amendments to conform North Carolina law to federal law.

The act became effective July 21, 1999. (EM)

No Billboards on I-40 East

S.L. 1999-436 (SB 829) requires the Joint Legislative Transportation Oversight Committee (Committee) to study whether to prohibit the additional erection of outdoor advertising along Highway 40 from the Orange-Alamance county line to the City of Wilmington. The Committee must report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly. Pending the report of the Committee, a moratorium is imposed on the erection of new outdoor advertising along the designated portion of the highway. The moratorium expires July 1, 2000.

The act became effective July 21, 1999. (EM)

Public Transportation

Transitways

S.L. 1999-350 (HB 1085) authorizes the Department of Transportation and cities to designate one or more travel lanes in their respective systems as "transitways" reserved for public transportation vehicles. Designated transitways shall be appropriately marked with signs or other markers.

The act became effective July 22, 1999. (GSP)

Regional Transportation Authority Amendments

S.L. 1999-445 (HB 937) amends the statutes governing the Triad area regional transportation authority (Authority Board). The act clarifies that an expansion of the territorial jurisdiction and service area of the authority into a county includes the entire county, if the Authority Board is expanded to include members of that county's Board of Commissioners. The act expands the Authority Board to include members of the local airport authorities. The act authorizes the Authority Board to create special tax districts in which the authority may levy a rental car gross receipts tax.

The act became effective August 10, 1999. (GSP)

Trucks

Commercial Vehicle Safety

S.L. 1999-330 (HB 303) amends the laws relating to commercial vehicle safety in the following ways:

- Creates fines for out-of-service violations.
- Creates the offense of possession of alcoholic beverages (open or closed) while operating a commercial motor vehicle.
- Requires $750,000 of liability insurance for all commercial motor vehicles.
- Increases the license point violations for offenses committed by drivers of commercial motor vehicles.
- Doubles the penalties for offenses committed by drivers of commercial motor vehicles.

The act also allows the Department of Transportation to charge individuals with speeding in a work zone with speeding and assess a penalty of $250. The act allows law enforcement officers and emergency vehicles to cross the median of a divided highway in certain situations.

Finally, the act amends North Carolina's definition of a commercial motor vehicle to generally include the following:

- Vehicles with a Gross Vehicle Weight Rating (loaded weight) of 26,001 or more.
- Vehicles designed to carry 16 passengers or more, including the driver.
- Vehicles transporting certain hazardous materials.

The act becomes effective December 1, 1999, and applies to violations occurring on or after that date. (EM)

Railroads

Appointments Bill; State Owned Railroads Commission Changes

S.L. 1999-431, Sec. 3.3 (SB 437, Sec. 3.3) amends G.S. 124-6(b) which concerns any railroad company that is organized as a corporation, the State is the owner of all the voting stock, and that has trackage in more than two counties. The section increases the size of the Board of Directors from 9 to 13 members. It increases the Governor's appointments from five to seven and increases the General Assembly's appointments from four to six.

This section becomes effective when the railroad company changes its articles of incorporation to increase the size of the board. (EM)

Studies
Legislative Research Commission

The 1999 Studies Bill

S.L. 1999-395, Sec. 2.1(9) (HB 163, Sec. 2.1(9)) authorizes the Legislative Research Commission to study four transportation-related issues: trucking safety, toll roads, municipal participation in road funding, and pedestrian ferry services. The Commission may report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly, or to the 2001 Regular Session of the General Assembly.

This section became effective July 1, 1999. (GSP)

New/Independent Studies/Commissions

Blue Ribbon Transportation Finance Study Commission

S.L. 1999-237, Sec. 27.2 (HB 168, Sec. 27.2) creates a Blue Ribbon Transportation Finance Study Commission (Commission) comprised of 15 members, including 8 members of the General Assembly. The Commission is directed to study items including the Highway Trust Fund Act of 1989, current revenue sources that support State transportation programs, and current financing of transportation system maintenance. The Commission is authorized to study any transportation finance-related issue approved by the cochairs. The Commission is directed to make an interim report to the Joint Legislative Transportation Oversight Committee on or before June 1, 2000 and a final report by March 1, 2001. The Commission will terminate upon the filing of its final report.

This section became effective July 1, 1999. (BC)

Future of the North Carolina Railroad Study Commission

S.L. 1999-237, Sec. 27.25 (HB 168, Sec. 27.25) establishes the Future of the North Carolina Railroad Study Commission. The Commission must study:

- The appropriate purpose, powers, and governance of the North Carolina Railroad Company.
- Issues important to the future of passenger and freight rail service in North Carolina.

The commission must submit a final report to the General Assembly on or before May 1, 2000.

This section became effective July 1, 1999. (EM)

Referrals to Existing Commissions/Committees

Joint Legislative Transportation Oversight Committee

S.L. 1999-395, Sec. 10.1 (HB 163, Sec. 10.1) directs the Joint Legislative Transportation Oversight Committee (JLTOC) to study:

- Notation of liens on motor vehicle titles.
- Nonbetterment utility relocation costs.

The JLTOC may report its findings and recommendations to the General Assembly prior to the 2000 Regular Session, or prior to the convening of the 2001 Regular Session.

This section became effective July 1, 1999. (GSP)

Subdivision Road Acceptance and Maintenance Study

S.L. 1999-237, Sec 27.8 (HB 168, Sec. 27.8) directs the Joint Legislative Transportation Oversight Committee (Committee) to study the State's policies for accepting and maintaining subdivision streets into the State highway system. The Committee may file a report on this subject to the 2000 Session of the General Assembly, and must file a final report with the 2001 Session of the General Assembly.

This section became effective July 1, 1999. (GSP)

Referrals to Departments, Agencies, Etc.

Report on Delayed Road Construction

S.L. 1999-237, Sec. 27.5 (HB 168, Sec. 27.5) directs the Department of Transportation (Department) to study reasons for delayed road construction in this State. The Department shall also make recommendations regarding the obtaining of environmental and historical permits in a timely or expedited manner, cooperation between DOT and other agencies involved in the permitting process, the acquisition of needed rights-of-way, and other related issues that result in delays. The Department is directed to report its findings and recommendations to the November, 1999 meetings of the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations, and to the Fiscal Research Division.

This section became effective July 1, 1999. (BC)

Report on Highway Construction Financing

S.L. 1999-237, Sec. 27.6 (HB 168, Sec. 27.6) directs the Department of Transportation (Department) to study various financing options available for increasing the pace of highway construction, including allowable cash-flow financing, advanced federal funding, highway

construction bonds, Grant Anticipation Revenue Vehicles, toll roads, and state and local participation in financing road projects. The Department is directed to report its findings and recommendations to the December 1999 meeting of the Joint Legislative Transportation Oversight Committee, to the Fiscal Research Division, and to the Blue Ribbon Transportation Finance Study Commission.

This section became effective July 1, 1999. (BC)

Global TransPark Authority to Report on Future Plans and Performance Measures

S.L. 1999-237, Sec. 27.23 (HB 168, Sec. 27.23) requires the Global TransPark Authority to submit a report to the Joint Legislative Transportation Oversight Committee by February 1, 2000, on its strategic and business plans for the years 2000 through 2010. The report must include specific interim goals and performance measures for use in determining the success of the implementation of these plans.

This section became effective July 1, 1999. (EM)

INDEX

House Bills

Senate Bills

Session Laws

Senate Joint Resolution

Senate Resolution