SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

2000

1999 GENERAL ASSEMBLY
1999 EXTRA SESSION
2000 REGULAR SESSION

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
SEPTEMBER 2000

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To the Members of the 2000 Session 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 Extra Session, held in December 1999 and dealing with Hurricane Floyd; the 2000 Extra Session, held in April 2000: and the 2000 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.

This document is the result of a combined effort by the following listing of staff members of the Research Division in alphabetical order: Al Andrews, Dee Atkinson, Cindy Avrette, Brenda Carter, Erika Churchill, Karen Cochrane-Brown, Kristen Crossen, Frank Folger, Bill Gilkeson, George Givens, Kory Goldsmith, Wendy Graf, Trina Griffin, Hannah Holm, Jeff Hudson, Shirley Iorio, Robin Johnson, Sara Kamprath, Esther Manheimer, Theresa Matula, Giles Perry, Barbara Riley, Walker Reagan, Steve Rose, Mary Shuping, Susan Sitze, 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. Linda Attarian is the chief editor of this year's summaries, and Esther Manheimer is the co-editor. DeAnne Mangum 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.ncleg.net/. 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

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Chapter 1
Agriculture

Erika Churchill (EC), Barbara Riley (BR)

Enacted Legislation
Agriculture

Date Label for Meat/Poultry/Seafood

S.L. 2000-67, Sec. 7.10 (HB 1840) amends the North Carolina Food, Drug and Cosmetic Act to provide that a food shall be deemed mislabeled if the label provided by the manufacturer, packer, distributor or retailer contains a "sell-by" date or other indicator of a last recommended date of sale and the date has been removed, obscured, or altered by persons other than the customer. This section does not prevent the removal of a label for repackaging so long as the new package or label does not have a "sell-by" date later than the one on the original package. Meats, poultry, and seafood may be relabeled if they have had their shelf life extended through freezing, cooking, or other processing that extends the shelf life of the product.

This section became effective July 1, 2000. (BR)

Farmland Preservation

S.L. 2000-67, Sec. 12.1 (HB 1840) directs that funds appropriated to the Department of Agriculture and Consumer Services for the Farmland Preservation Trust Fund for the fiscal year 2000-2001 be used to purchase agricultural conservation easements perpetual in duration.

This section became effective July 1, 2000. (BR)

Rural Economic Development Center Funds for Research

S.L. 2000-67, Sec. 14.13A (HB 1840) allocates funds to the Rural Economic Development Center to be used for value-added alternative crop research and oyster research.

This section became effective July 1, 2000. (EC)

Preserve Farmland/Promote Small, Family–Owned Farms

S.L. 2000-171 (HB 1132), amending G.S. 106-744, establishes the North Carolina Farmland Preservation Trust Fund (Trust Fund). Certain counties and private nonprofit conservation organizations must provide matching funds to receive grants from the Trust Fund. The match requirements are:

- 30% for a nonprofit conservation organization.
- 15% for an enterprise tier-4 or -5 county that has prepared a Farmland Preservation Plan (Plan).
- 30% for a county that has not prepared a Plan.
- 0% for an enterprise tier-1, -2, or -3 county that has prepared a Plan.

Plans shall contain a list and description of existing agricultural activity in the county, a list of existing challenges to continued family farming in the county, a list of opportunities to maintain or enhance small family farms and the local agricultural economy, a description of how the county plans to maintain a viable agricultural economy, discussion of the use of farmland preservation tools, a schedule for implementation of the Plan, and identification of possible funding sources for the long-term support of the Plan.

This act became effective July 1, 2000. (BR)

Pest Control Committee Members

S.L. 2000-175 (SB 1082) amends G.S. 106-65.23(c), which established the Structural Pest Control Committee. This act extends the terms of members appointed by the General Assembly from two to four years. This act also provides that members appointed upon the recommendation of the Speaker of the House of Representatives be North Carolina residents, actively engaged in the pest control industry, and licensed in at least two phases of structural pest control.

This act was retroactively effective as of October 1, 1999 and applies to members appointed on or after that date. (BR)

Tobacco

Tobacco Settlement Agreement, Tobacco Trust Fund

S.L. 2000-147 (HB 1431) creates the Tobacco Trust Fund and the Tobacco Trust Fund Commission. Also created by the same legislation are the Health and Wellness Trust Fund and the Health and Wellness Trust Fund Commission. (See also **Health and Human Services**.)

From the Master Settlement Agreement payment each year, twenty-five percent (25%) of the payment will be transferred to the Tobacco Trust Fund (Fund). The Tobacco Trust Fund Commission (Commission), consisting of 18 members, is established to administer the Fund and govern the distribution of funds. Principal and interest earnings may be spent each year in accordance with criteria and guidelines the Commission adopts. Administratively, the Commission is placed under the Department of Agriculture and Consumer Services.

The Commission is authorized to provide assistance through two separate programs:

1. Compensatory Programs.
   - Tobacco producers, tobacco allotment holders, persons engaged in tobacco-related business, persons engaged in tobacco product component businesses, and individuals displaced from tobacco-related employment are potential recipients of direct and indirect financial assistance.
   - The purpose of Compensatory Programs is to indemnify and compensate qualified recipients for compensable economic losses and to provide assistance to qualified recipients to maintain economic viability of their businesses.
   - Both tobacco-related businesses (defined as an entity that provides products or services used directly in the production of tobacco or in the support of the business of the production of tobacco excluding the manufacturing of tobacco products or the sale of tobacco products at wholesale or retail) and those individuals in tobacco-related employment (defined as employment in a tobacco-related business or in the manufacturing of tobacco products or the component products used in the manufacture of tobacco products excluding individuals employed in the sale of tobacco products at wholesale or retail) are eligible for assistance under this program.
2. Qualified Agricultural Programs.
   - Agencies and departments of the State, local units of government, the federal government, and members of the private sector are potential recipients.
   - Programs must be developed to support and foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy.

The Commission may establish guidelines and criteria for applying, evaluating, and allocating Trust Fund monies via adoption of rules under the Administrative Procedure Act. The Commission must report each November 1 to the Joint Legislative Commission on Governmental Operations.

This act became effective August 2, 2000. (EC)

Wildlife Resources

Personal Watercraft Amendments

S.L. 2000-52 (HB 541) amends the statutes that regulate the operation of personal watercraft (PWC). Under current law, the operation of a PWC within 100 feet of a shoreline, dock, swimmer, angler or anchored vessel at greater than no-wake speed is deemed careless and reckless operation and punishable as a Class 2 misdemeanor. G.S. 75A-13.3(e)(4).

S.L. 2000-52 makes the following changes to G.S. 75A-13.3:

- G.S. 75A-13.3(e)(4) is repealed.
- New subdivision (a)(1) in G.S. 75A-13.3 makes it unlawful to operate a PWC at greater than no-wake speed within 100 feet of an anchored vessel, dock, swimming area, swimmer, fisherman, or manually propelled vessel unless the PWC is operating in a narrow channel.
- Violation of subdivision (a)(1) is a Class 3 misdemeanor.
- The no-wake zone is reduced to 50 feet in a narrow channel. "Narrow channel" is defined as a segment of the State waters 300 feet or less in width.
- The requirement that PWCs remain 100 feet from the shoreline is repealed.
- G.S. 75A-13.3(h) is corrected to read "local lake authorities" instead of "local wake authorities".

This act became effective June 30, 2000. (BR)

Studies

Small Family Farm Preservation

S.L. 2000-138, Sec. 2.1(6)a (SB 787) authorizes the Legislative Research Commission to study the issue of small family farm preservation. (BR)

Snakes

S.L. 2000-138, Sec. 2.1(6)c (SB 787) authorizes the Legislative Research Commission to study the Wildlife Resources Commission Rules concerning snakes. (EC)

Department of Health and Human Services, Department of Public Instruction, Department of Agriculture and Consumer Services – Hunger Program Studies

S.L. 2000-138, Secs. 14.1–14.3 (SB 787). See **Children and Families**.

Chapter 2
Children And Families

Erika Churchill (EC), Frank Folger (FF), Wendy Graf (WLG)

Enacted Legislation

Closing the Achievement Gap Pilot Programs

S.L. 2000-67, Sec. 11.4A (HB 1840) appropriates $250,000 from funds designated in the 2000-2001 budget to the Department of Health and Human Services (DHHS) to create and administer a pilot program for families with at least one child performing below grade level to strengthen family cohesiveness, function and economic progress, while strengthening the community in which the family lives and improving the academic performance of their children to impede continuation of the cycle of poverty. DHHS must initially establish at least eight pilot programs. To be eligible, a family must have the following:

- At least one child in elementary or middle school performing at least one year below grade level.
- At least one adult who agrees to participate in the program and in an assessment of family functioning.
- An income below 200% of the federal poverty level or be authorized by requirements of the funding source, if above the 200% cap.

DHHS must report to the Committee on Improving the Academic Achievement of Minority and At-Risk Students, the Senate Appropriations Committee on Human Services, and the House Appropriations Subcommittee on Health and Human Services by March 1, 2001. The report shall include identifying and evaluative information on the pilot programs. DHHS shall make a final report to the same committees by February 2, 2002 with a recommendation whether to extend the program statewide, and if so, the projected cost, process, and time frame for implementation.

This section became effective July 1, 2000. (FF)

Waive NC Health Choice Waiting Period for Special Needs Children

S.L. 2000-67, Secs. 11.8(a)-(b) (HB 1840). See Insurance.

Child Welfare System Improvements

S.L. 2000-67, Secs. 11.14(a)-(d) (HB 1840), amending S.L. 1999-237, Sec. 11.28(a), change the reporting requirements for the Division of Social Services, Department of Health and Human Services (Division) to require the Division to report to the Senate Appropriations Committee on Human Resources, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the activities of the State Child Fatality Review Team no later than October 1 of each year, instead of semi-annually.

These sections amend G.S. 131D-10.6A to make continuing education an annual requirement for foster care parents and repeal the current established training requirements for child welfare staff hired after January 1, 1998. The following minimum training requirements for child welfare services staff are established:

- 72 hours of pre-service training before having client contact responsibilities (exceptions may be granted to workers who are enrolled in appropriate social work programs).
- 18 additional hours for child protective services workers.
- 39 additional hours for foster care and adoption workers.

- 54 additional hours for child welfare services supervisors.
- 24 hours of continuing education annually.

These sections became effective July 1, 2000. The training requirements apply to child welfare services staff initially hired on or after January 1, 1998, (WLG)

Special Children Adoption Fund

S.L. 2000-67, Secs. 11.15(a)-(b) (HB 1840) appropriate $1,100,000 to support the Special Children Adoption Fund (Fund) for the 2000-2001 fiscal year. Fund monies are awarded to licensed public and private adoption agencies upon the adoption of children who are physically handicapped, older, or otherwise hard to place, and upon the adoption of children in foster care, to be used exclusively to enhance adoption services. Of the total funds appropriated, $400,000 is reserved for payment to private agencies.

These sections became effective July 1, 2000. (FF)

Special Needs Adoptions Incentive Fund

S.L. 2000-67, Sec. 11.16 (HB 1840) creates the Special Needs Adoptions Incentive Fund (Fund) to financially assist adoptions of certain children in licensed foster care homes. Fund monies are available to foster care families who adopt children with special needs as defined by the Social Services Commission, and must be accompanied by matching county funds. The program is not an entitlement, is subject to the availability of funds, and will be implemented via rules adopted by the Social Services Commission.

This section becomes effective January 1, 2001. (FF)

Child Residential Treatment Services Program

S.L. 2000-67, Secs. 11.19(a)-(d) (HB 1840) require the Department of Health and Human Services (DHHS) to create and implement the Child Residential Treatment Services Program (Program) to provide residential treatment alternatives for children at risk of institutionalization or other out-of-home placement. Program funds are targeted for non-Medicaid eligible children, but may be used for Medicaid-eligible children, and may also be used to expand the Child Mental Health Systems of Care Project; but DHHS may not allocate funds appropriated for the Program until Memoranda of Agreement have been entered into between DHHS and other affected agencies at the State level and between local departments of social services, area mental health programs, the Administrative Office of the Courts, and the Office of Juvenile Justice, as appropriate, locally. Program services are not an entitlement for non-Medicaid eligible children served.

The Program shall include:

- Behavioral health screenings.
- Appropriate and medically necessary residential treatment placements.
- Multidisciplinary case management.
- Utilization review.
- Mechanisms to prevent the placement of a child into social services custody to obtain mental health residential treatment services.
- Mechanisms to maximize funding to achieve Program objectives.
- Contracting between DHHS and residential service providers, when appropriate.

DHHS, in conjunction with the Office of Juvenile Justice and other affected agencies, must submit a progress report no later than February 1, 2001 and a final report no later than May 1, 2002 to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division on:

- Demographics/Numbers/Treatment needs of population screened, placed, and served.
- Funding.
- Child's length of stay in residential treatment, transition, and return to home.

- Number of children diverted from institutions and other out-of-home placements.
- Recommendations for improving the Program.

These sections became effective July 1, 2000. (FF)

Assistance for Children with Autism

S.L. 2000-67, Secs. 11.20(a)-(c) (HB 1840) direct the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division) to use $1.2 million of its funds to assist autistic children statewide whose behaviors place them at serious risk of institutionalization. The two programs that are to be part of, and staff supported by, the Murdoch Mental Retardation Center are:

- A six bed short-term residential unit; and
- A four bed residential program that may offer short-term diagnostic/prescriptive services or comprehensive interventions in order to transition children back to their homes and communities.

An additional $326,000 of the Division's funds for fiscal year 2000-2001 are to be used to provide residential services for children with autism. Progress reports on the programs are to be submitted December 1, 2000 and April 1, 2001 with a final report due on January 1, 2002.

These sections became effective July 1, 2000. (EC)

Services to Children at Risk for Institutionalization or Other Out-of-Home Placement

S.L. 2000-67, Secs. 11.21(a)-(e) (HB 1840) direct the Department of Health and Human Services (DHHS), the Division of Mental Health, the Developmental Disabilities and the Substance Abuse Services to do the following with respect to children who are at risk for institutionalization or other out-of-home placement:

- Only provide medically necessary treatment.
- Implement utilization review.
- Immediately:
  - Eliminate Willie M. Program administration and infrastructure at the State and local level.
  - Identify saving realized from that Program elimination.
  - Adopt guiding principles for services, including outcome-oriented and evaluation-based delivery of services and efficient, convenient and cost effective provision of services.
  - Implement cost reduction strategies.
  - Collaborate with other State agencies and local departments of social services and area mental health programs to facilitate cost sharing.

DHHS must report on its progress 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 May 1, 2002.

This act repeals the following provisions:

- G.S. 122C-3(13a) which defines "Eligible assaultive and violent children" as used in that Chapter.
- G.S. 122C-112(14) which directs the Secretary to adopt rules to be followed in the determination of eligibility for and to ensure the provision of services for assaultive and violent children.
- Part 7 of Article 4 of Chapter 122C of the General Statutes, which sets out procedures for contested case hearings for eligible assaultive and violent children.

These sections became effective July 1, 2000 and apply to petitions for contested case review filed on or after July 1, 2000. (WLG)

Child Care Subsidy Rates

S.L. 2000-67, Secs. 11.27(a)-(e) (HB 1840) amend current law governing state subsidies for child care facilities.

The Department of Health and Human Services (DHHS) is required to conduct a statewide market rate study of childcare facilities, every two years, and establish a market rated for each rated quality level for each age group within each county along with a corresponding statewide market rate. The rated quality level is measured in "stars", with a "one star" rating being the lowest and a "five star" rating being the highest. The market rate will be set at the 75th percentile of fees charged to unsubsidized, privately paying parents at each rated quality level for each age group. DHHS must publish the results and implement market rates within six months of completing the study. DHHS must complete the first market rate study by April 1, 2001 and must complete a one-time interim study by April 1, 2002, incorporating the first study's results with a study of rates charged at facilities that have changed their rated quality level since the first study.

This provision expires on September 1, 2000, the current payment rate schedule used to compensate licensed child care centers which achieve a rate level between two and five stars, and replaces it with a system by which licensed child care centers with two or more stars are paid at a subsidy rate established for that rated quality level for that age group. Each county's subsidy rate is based upon that county's own market rate for each rated quality level, except that a subsidy based on a statewide market rate must be used in a county for an age group in which there are less than 75 children at that rated quality level where the statewide market rate is at least as high as the county-based market rate.

This provision clarifies the eligibility of noncitizen families for childcare subsidies. Noncitizen legal resident families are eligible, if all other conditions are met. Noncitizen illegal resident families are only eligible if the child for whom the subsidy is sought:

- receives child protective services or foster care services;
- is developmentally delayed or at risk of being developmentally delayed;
- is a citizen of the United States.

These sections became effective July 1, 2000. (FF)

Amendments to Smart Start

S.L. 2000-67, Secs. 11.28(a)-(n) (HB 1840) make several changes to the North Carolina Partnership for the Children (Smart Start) enabling legislation found in Chapter 143B. Amendments include the following:

- Clarification that no member of the General Assembly is to serve on a local partnership board.
- Clarification that the North Carolina Partnership may contract at the State level, if it determines it would be more efficient to do so.
- The North Carolina Partnership develop a regional accounting system, rather than a centralized system, and all regional partnerships participate in the regional accounting and contract management system. Previously just partnerships in operation less than two years or those with deficiencies in their accounting system participated in the centralized accounting system.
- The North Carolina Partnership may adjust its local allocations by up to 10% based on performance, without being tied to a specific percentage adjustment. Previously, the local allocation was increased 10% for a superior rating, at base level for a satisfactory rating, and decreased 10% for a needs improvement rating.
- Local partnerships are to collaborate with the North Carolina Partnership, in conjunction with the Department of Health and Human Services, when adjusting their funding formulas.
- 70% of the local partnership funds that must be designated for direct services are to be used for:
  - Improving access to child care and early childhood education services;
  - Develop new child care and early childhood education services; and
  - Improve quality of child care and early childhood education services in all settings.

- Of the total funds allocated to a local partnership for direct services, *at least 30% of those funds which are spent in each year* must be spent to expand child care subsidies. Under prior law, a local partnership was required to spend at least 30% of the total funds allocated for direct services to expand child care subsidies. Also, the North Carolina Partnership may increase this minimum from 30% up to a maximum of 50%, if the North Carolina Partnership determines a higher percentage is justified based upon a significant local waiting list for subsidized child care. (Effective September 1, 2000)
- While the total local match remains at the 20% level, the proportions are changed. The cash match has been increased to at least 15% from 10%, and the in-kind match is now limited to 5%, instead of 10%. Volunteer services may be treated as in-kind contributions.

These sections became effective July 1, 2000. (EC)

Use of Newborn Screening Fees

S.L. 2000-67, Sec. 11.31(a) (HB 1840) amends G.S. 130A-125 which establishes a program, administered by the Department of Health and Human Services (DHHS), for the screening of newborns for metabolic and other hereditary and congenital disorders. This section adds to the Newborn Screening Program the provision of a physiological ear screening of each newborn for the presence of permanent hearing loss. This section also directs that any fees collected by DHHS for laboratory tests shall remain with DHHS to offset the program cost.

This section became effective July 1, 2000. (WLG)

Pregnancy Prevention Program

S.L. 2000-67, Sec. 11.40 (HB 1840). This section was repealed by S.L. 2000-138, Secs. 16(a)-(c) (SB 787).

Funds for Medicaid Coverage of Family Planning Services

S.L. 2000-67, Sec. 11.42A (HB 1840) directs $469,000 of the funds appropriated to the Department of Health and Human Services be used to provide the State match for a Medicaid waiver to provide Medicaid coverage for family planning services to men and women of child bearing age whose family income is equal to or less than 185% of the federal poverty level.

This section directs that the funds not be expended earlier than January 1, 2001 and makes expenditure of funds contingent upon approval of the waiver by the Health Care Financing Administration.

This section became effective July 1, 2000. (WLG)

Drivers Points No Child Restraint

S.L. 2000-117 (SB 1347). See **Criminal Law and Procedure.**

Guardianship Revision

S.L. 2000-124 (SB 1340). See **Civil Law and Procedure.**

Prohibit Cyberstalking/Treat Domestic Violence

S.L. 2000-125 (HB 813). See **Criminal Law and Procedure.**

Clarify Juvenile Procedures

S.L. 2000-183 (HB 1609). See **Civil Law and Procedure.**

Studies
Legislative Research Commission

Pregnancy and Drug Abuse

S.L. 2000-138, Sec. 2.1(4)a (SB 787) authorizes the Legislative Research Commission to study pregnancy and drug abuse issues. (FF)

Referrals to Departments, Agencies, Etc.

Department of Health and Human Services Adolescent Pregnancy Prevention Study

S.L. 2000-138, Secs. 16(a)-(c) (SB 787) repeal Sec. 11.40 of S.L. 2000-67 which made changes to the Adolescent Pregnancy Prevention Program, and direct the Department of Health and Human Services (DHHS) to develop a plan for consolidating adolescent pregnancy prevention programs to facilitate achieving:

- Efficient operations and avoiding duplication of efforts.
- Consistent reduction of adolescent pregnancy among demographic subgroups.
- Valid and reliable methods for evaluating fiscal and program performance.
- Clear and understandable program organization.
- Targeting counties and municipalities with the greatest need.
- Equitable and need-based process for funding projects.
- Best practice models.

These sections direct DHHS to report 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 March 1, 2001. (WLG)

Child Support Collection and Enforcement

S.L. 2000-138, Secs. 13.1-13.3 (SB 787) direct the Department of Health and Human Services and the Administrative Office of the Courts to study ways to more effectively coordinate the efforts of the two agencies with regard to collection and enforcement of child support. The five-year study is to include addressing the problems with and barriers to establishment of a unified system of collection and enforcement, along with projected costs for a unified system. A final report is due to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division by March 1, 2001. (EC)

Hunger Program Studies

S.L. 2000-138, Secs. 14.1-14.3 (SB 787) direct the Department of Health and Human Services (DHHS), the Department of Public Instruction (DPI), the Department of Agriculture and Consumer Services, and other interested parties to study utilization of the School Breakfast Program, School Lunch Program, and Summer Food Program. DPI and DHHS are instructed to take available actions to increase usage of the programs during the 2000-2001 school year.

Additionally, DHHS, in conjunction with the Department of Agriculture and Consumer Services and other interested parties is directed to study utilization of the Food Stamp Program with a focus on reasons for the underutilization of the program.

DHHS must make an interim report to the Joint Legislative Public Assistance Commission by December 1, 2000 and make a final report to that Commission by March 1, 2001. (EC)

Chapter 3
Civil Law and Procedure

Al Andrews (AA), Brenda Carter (BC), Karen Cochrane-Brown (KCB), Frank Folger (FF), Bill Gilkeson (WRG), Wendy Graf (WLG), Trina Griffin (TG), Susan Sitze (SS), Robin Johnson (RJ), Esther Manheimer (EM), Walker Reagan (WR), Steve Rose (SR), Rick Zechini (RZ)

Enacted Legislation
Civil Procedure

Civil Remedies Appeal Bond

S.L. 2000-1 (SB 2, Extra Session 2000) allows the judgment debtor in an out-of-state civil action to post a bond in North Carolina to stay the execution of a judgment for money damages other than or in addition to compensatory damages. The purpose of the bond is to guarantee the availability of assets to satisfy the amount of the judgment pending an appeal in the other state. This act also limits to $25 million the maximum amount of a bond needed to stay execution of the punitive damages portion of an out-of-state or in-state judgment.

This act amends Chapter 1C of the General Statutes by creating a new Article 17A entitled "Enforcement of Foreign Judgments for Noncompensatory Damages". This Article applies to actions under the Uniform Enforcement of Foreign Judgment Act and to civil actions in this State to enforce a foreign judgment for the payment of money damages other than or in excess of compensatory damages. Article 17A directs courts, upon the posting of a bond as required under G.S. 1-289, to stay enforcement of these foreign judgments in North Carolina until all available appeals in the foreign state are concluded or until the time for taking all appeals has expired.

This act also amends G.S. 1-289, which governs stays of execution of civil judgments during an appeal, by adding two new subsections (b) and (c). Subsection (b) authorizes judgment debtors to obtain a stay by posting a maximum bond of $25 million for the portion of money damages other than compensatory damages or in excess of compensatory damages. Judgment debtors are still required to post a bond of 100% of the amount of compensatory damages. Subsection (c) provides that this limitation of the bond for punitive damages is not applicable if the judgment creditor proves by the preponderance of the evidence that the judgment debtor, for the purpose of evading the judgment, is dissipating, secreting, or diverting assets other than in the ordinary course of business outside the jurisdiction of North Carolina or federal courts.

This act became effective April 5, 2000 and applies to judgments filed or entered in North Carolina on or after that date, without regard to the date on which a foreign judgment is rendered in the foreign state. (WR)

Raise State Tort Claims Limit

S.L. 2000-67, Secs. 7A(a)-(j) (HB 1840) increase the limit for claims under the State Tort Claims Act from $150,000 to $500,000 per claim per occurrence. This act also makes corresponding increases in the limits for claims the State may defend against its employees, medical contractors, local sanitarians, and public school employees. These provisions modify current claim payment methods limits the liability of the agency employing the responsible employee to the first $150,000 per claim and then require all State agencies to contribute a proportionate share of the agency's estimated lapsed salaries to the Office of State Budget and Management for payment of the balance of the claim.

These sections became effective July 1, 2000 and apply to claims or actions pending on or after that date. For cases pending on July 1, 2000, as a transitional rule, the State's right to counterclaim is

limited to $150,000 or the amount of the claimant's claim if amended to take care of the increased limit. (WR)

Written Motions/Supporting Briefs

S.L. 2000-127 (SB 393) mandates that, to the extent offered, briefs or memoranda supporting or opposing dispositive motions being heard in civil superior court must be served on each party at least two days before the hearing on the motion. The served party must actually receive the document within the required time. This act applies these same rules to affidavits in opposition to all non-ex-parte written motions and to affidavits in opposition to a motion for summary judgment. The time requirement for motions, however, may be altered by consent of the parties. If a party fails to comply, the court may do any of the following:

- Continue the hearing to allow the served party reasonable time to respond.
- Proceed without considering the untimely served brief or memorandum.
- Take other action to serve the ends of justice.

This act further adds that, in civil cases, all written motions, dispositive, or otherwise, must state grounds for the motion with particularity.

This act becomes effective October 1, 2000. (FF)

Clarify Juvenile Procedures

S.L. 2000-183 (HB 1609) amends the Juvenile Code to clarify that termination of parental rights (TPR) may occur either by petition or by motion in a pending abuse, neglect, or dependency proceeding (pending case). This act sets out the following procedural requirements:

- The summons accompanying a filed petition alleging abuse, neglect, or dependency must include notice that the dispositional order or a subsequent order may terminate the parental rights of the respondent parent.
- The hearing of motions is added to the court's exclusive original jurisdiction to hear and determine any TPR petition or motion.
- When a TPR petition is filed in a district where there is a pending case involving the same juvenile, a motion may be filed to consolidate the action.
- The parties who bring a TPR petition or motion may intervene in a pending case for the purpose of filing a TPR motion.
- A guardian ad litem no longer must have served in that capacity for at least one continuous year in order to be able to file a TPR petition or motion.
- Upon the filing of a TPR motion in a pending case, notice must be sent to the same persons entitled to notice when a TPR petition is filed and, in addition, to the juvenile's guardian ad litem if one has been appointed. This act clarifies that parents who have relinquished the juvenile to a county department of social services are not entitled to this notice.
- If the county director of social services is served a TPR motion, the director must file a written response and be a party to the proceeding if the director is not already involved.
- This act sets forth the time period within which a respondent must respond. Failure to respond within the time period provides the court with the right to proceed with a TPR hearing.
- This act conforms the requirements of a response to a TPR motion to the requirements applicable to answer a TPR petition. These requirements provide that, if the parent denies the allegations in the petition or motion, a guardian ad litem for the juvenile must be appointed unless the child is already represented and an attorney must be appointed to represent the guardian ad litem if the guardian ad litem is not an attorney. Payments for their services will be the responsibility of the Administrative Office of the Court. The appointment of a guardian ad litem is not necessary if the parent does not deny the allegations, but the judge may appoint one to determine the best interest of the child.

- This act provides the same protections to parents in connection with a hearing on a motion that they have in connection with a hearing on a petition. If the parents are indigent, desire counsel, and are unable to afford counsel, the court shall appoint counsel and grant the necessary time for the counsel to prepare their defense to the TPR petition or motion. If the parents refuse counsel and are present at the hearing, the judge shall determine their ability to proceed without counsel. Likewise, the burden of proof is on the petitioner or the movant. The findings of fact must be based on clear, cogent, and convincing evidence.
- The court may deny a TPR motion based on what is in the best interest of a child. Counsel for the petitioner or movant is responsible for serving a copy of the order to the guardian ad litem and the child if the child is at least 12 years old.

This act also directs the Legislative Research Commission to study issues related to expungement of certain records when an abuse, neglect, or dependency report is not substantiated or proven.

This act becomes effective October 1, 2000. (RJ)

Courts

Additional Magistrates Authorized

S.L. 2000-67, Sec. 15.2 (HB 1840) authorizes an additional magistrate in each of the following counties: Alamance, Alexander, Anson, Brunswick, Chatham, Guilford, Hertford, Jackson, McDowell, Mecklenburg, Perquimans, Wake, and Warren.

This section became effective July 1, 2000. (BC)

Additional District Court Judges

S.L. 2000-67, Secs. 15.3(a)-(c) (HB 1840) authorize one additional district court judge to be appointed by the Governor in each of the following District Court Districts: 1, 4, 9B, 10, 11, 17A, 22, 26, and 28. The successors to these appointees will be elected in the 2004 election for four-year terms.

These sections become effective December 15, 2000 for Districts 22, 26, and 28. For Districts 1, 4, 9B, 11, and 17A, which are subject to Section 5 of the Voting Rights Act of 1965 and require prior federal approval, these sections will become effective on December 15, 2000 or 15 days after the date of approval, whichever is later. (TG)

Authorize Director of the AOC to Enter into Contracts for Services

S.L. 2000-67, Secs. 15.4(a)-(g) (HB 1840) expand the authority of the Director of the Administrative Office of the Courts (AOC) to enter into contracts with local governments for the provision of certain services. Last year, the General Assembly authorized such contracts for temporary assistance to district attorneys. This act authorizes the Director of AOC to enter into contracts with local governments to provide services of judicial secretaries, temporary assistant public defenders, assistant clerks, deputy clerks, and other employees in the office of Clerk of Court. The Director of AOC may enter into these contracts only upon a showing that the overwhelming public interest warrants the use of additional resources for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving a threat to public safety. Neither the General Assembly is obligated to appropriate funds to implement this provision, nor is the AOC obligated to provide the administrative costs of establishing or maintaining the positions or services. Further, AOC is not obligated to maintain positions or services initially provided for under this act. The AOC shall report to the Chairs of the Appropriations Committees of both Houses and to the Chairs of the Subcommittee on Justice and Public Safety of both Houses by March 1 of each year on the contracts entered into with local governments to provide services. The report shall include the number of applications made to the AOC, the number of contracts entered into, and the dollar amounts of each contract.

These sections became effective July 1, 2000. (KCB)

Additional Court of Appeal Judges

S.L. 2000-67, Sec. 15.5 (HB 1840) increases the 12-judge North Carolina Court of Appeals to 15. The legislation directs the Governor to appoint the three new judges on or after December 15, 2000. Each appointee will serve from the time of the appointment until January 1, 2005. The successor to each of the three appointees will be elected in the 2004 election. Judges elected at that time will serve a full eight-year term.

This section becomes effective December 15, 2000, but cannot be implemented until approved by the United States Justice Department under Section 5 of the Voting Rights Act. (WRG)

Additional Superior Court Judges

S.L. 2000-67, Secs. 15.6(a)-(c) (HB 1840) authorize one additional superior court judge to be appointed by the Governor in District 26B. The successor to that judge will be elected in the 2002 election and will serve a full eight-year term. These provisions also authorize one additional superior court judge to be appointed by the Governor in District 4B. The successor to that judge will be elected in the 2002 election to serve the remainder of the unexpired term expiring December 31, 2006.

These sections become effective December 15, 2000 for District 26B. For District 4B, which is subject to Section 5 of the Voting Rights Act, it becomes effective December 15, 2000, or 15 days after the date upon which this section is approved by the United States Justice Department, whichever is later. (WLG)

Reduce Special Superior Court Judgeships/Extend Term of Special Superior Court Judge

S.L. 2000-67, Secs. 15.8(a)-(b) (HB 1840) eliminate one of the special superior court judgeships appointed by the Governor that was subject to renewal, effective October 1, 2000, and extends the end of the term of a separate special superior court judge from September 30, 2000 to December 31, 2000. This position is not subject to renewal.

These sections became effective July 1, 2000. (SS)

Increase Court Costs

S.L. 2000-109 (HB 1854). See **Taxation.**

Adverse Weather Court Closings

S.L. 2000-166 (HB 1502) authorizes judicial officials to cancel, postpone or alter sessions of court and authorizes judicial branch hiring authorities to close court offices, pursuant to Administrative Office of the Courts guidelines, in response to adverse weather or other emergency situations.

This act also authorizes the Chief Justice of the North Carolina Supreme Court to determine and declare the existence of catastrophic conditions in a county or counties. The Chief Justice may also issue an order extending court and filing deadlines in the county or counties affected by at least ten days following the order's effective date. (These provisions do not affect in chambers jurisdiction of judges or other judicial officers.)

This act became effective August 2, 2000. (FF)

Miscellaneous

Sentencing Services Program

S.L. 2000-67, Secs. 15.9(a)-(c) (HB 1840) require that information obtained from offenders by Sentencing Services Program staff in the course of preparing a sentencing plan may not be used by the State for any purpose. Under prior law, such information was authorized to be used only for the purpose of establishing guilt. Additionally, Sentencing Services information obtained in the preparation of a sentencing plan will be afforded the same protections as presentence investigation reports done by Probation and Parole. This means that the Sentencing Services information obtained in the preparation of a sentencing plan is excluded from the public record and the defendant can move for expungement of the information from the record.

These sections became effective July 1, 2000. (EM)

Limit Liability/Defibrillator

S.L. 2000-113 (SB 1269) provides qualified "Good Samaritan" immunity to users of an automated external defibrillator (AED) under emergency circumstances. The following persons and entities have qualified immunity:

- Users of an AED in an emergency to attempt to save someone's life;
- Trainers of cardiopulmonary resuscitation (CPR) and AED;
- Persons or entities responsible for the site where the AED device is located if that person or entity has provided for a nationally recognized training program; and
- North Carolina licensed physicians who write a prescription for an AED without receiving compensation.

This act does not limit any product liability claims against an AED manufacturer or seller. Sellers of AED's must notify the Department of Health and Human Services, the Division of Facilities Services, and the Office of Emergency Medical Services of the existence, location, and type of AED purchased.

This act becomes effective October 1, 2000, and applies to all causes of action arising on or after that date. (AA)

Tax Enforcement

S.L. 2000-119 (HB 1551). See **Taxation.**

Guardianship Revisions

S.L. 2000-124 (SB 1340) amends G.S. 7B-600, governing the appointment of guardians in juvenile matters involving abuse, neglect, and dependency. This act provides that in a case where the court has determined that appointment of a relative or other suitable person is in the best interest of the juvenile and determined that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds one or more of the following:

- The relationship between the juvenile and guardian is no longer in the juvenile's best interest.
- The guardian is unfit.
- The guardian has neglected the guardian's duties.
- The guardian is unwilling or unable to continue assuming a guardian's duties.

This act also amends G.S. 7B-1000(a), governing review hearings of custody orders. Under current law, where custody has been removed, pursuant to a custody order, a review hearing must be conducted within 90 days and a permanency planning hearing must be conducted within 12 months. In addition, a party may file a petition or motion for a review hearing of the custody order. When a party files

such a petition or motion, this act will require the court to enforce the restrictions on termination of the guardianship, as discussed above, in cases where guardianship is the permanent plan of the juvenile. This act also authorizes the court to take the following actions while conducting the review hearing:

- Order the county department of social services to conduct an investigation, file a report, and give testimony regarding the performance of the guardian.
- Use community resources to study the guardian.
- Ensure that a guardian ad litem has been appointed for the juvenile.
- Take any other action necessary in order to make a determination.

This act becomes effective October 1, 2000. (SR)

Modify Rights of Decedent's Spouse

S.L. 2000-178 (HB 979), as amended by S.L. 2000-140, Sec. 92 (SB 1335), repeals the dissent statutes (Article 1 of Chapter 30 of the General Statutes) and replaces them with the elective share statutes (Article 1A), effective January 1, 2001. Under the dissent statutes, the surviving spouse of a decedent who executed a will has the right to a minimum share of the decedent's probate property. If the surviving spouse's share under the will along with any non-probate property the spouse receives is less than a threshold amount, based upon the amount that the surviving spouse would be entitled to under the intestate succession statutes (Chapter 29 of the General Statutes), the surviving spouse may dissent and is entitled to the respective threshold amount. Similarly, under the intestate succession statutes the surviving spouse of a decedent who did not execute a will is entitled to a certain amount of the decedent's property.

These statues, however, provide a surviving spouse with a minimum share of the decedent's probate property only and do not account for the decedent's non-probate property. As the result of federal tax law and the desire to distribute property outside of probate, the value of non-probate property, such as IRAs, tax-deferred annuities, employee retirement plan accounts, and certain types of trusts, has increased since these statutes were enacted in 1959. Thus, the intent of the dissent statutes and the intestate succession statutes to prevent a decedent from disinheriting the surviving spouse and to protect the surviving spouse against loss of support upon the decedent's death is being frustrated.

The new elective share statutes grant a surviving spouse, whether the decedent executed a will or not, the right to claim an elective share of the total net assets of the decedent. Total net assets include probate and non-probate property. The applicable share of the total net assets is as follows:

- If the decedent is not survived by any lineal descendants, one-half of the total net assets.
- If the decedent is survived by one child or the lineal descendants of one deceased child, one-half of the total net assets.
- If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the total net assets.

In cases where the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the elective share is reduced by one-half.

The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse. A claim must be made within six months after the issuance of letters of testamentary or letters of administration. The clerk of superior court must hold a hearing to determine whether the surviving spouse is entitled to an elective share, and if so, how much. Any party in interest may appeal from the decision to the superior court.

The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse. However, a waiver is not enforceable if the surviving spouse proves that the waiver was not executed voluntarily or the surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

This act becomes effective January 1, 2001 and applies to estates of decedents dying on or after that date. (RZ)

Amend Contested Case Procedure

S.L. 2000-190 (HB 968). See **State Government.**

Studies

Legislative Research Commission

Seized Property and Termination of Parental Rights of Rapists

S.L. 2000-138, Secs. 2.1(7)a and b (SB 787) authorize the Legislative Research Commission to study issues related to seized property and the termination of the parental rights of rapists. (RZ)

Expungement of Information for the Central Registry

S.L. 2000-183, Sec. 13 (HB 1609) directs the Legislative Research Commission to study issues related to expungement of information regarding abuse, neglect, and dependency cases or from judicial records of juvenile cases that alleged abuse, neglect, or dependency from the Central Registry. The Commission is to make recommendations to the 2001 Session of the General Assembly.

New Independent Studies/Commissions

The Department of Health and Human Services and the Administrative Office of the Courts Study of the Child Support System

S.L. 2000-138, Secs. 13.1-13.3 (SB 787). See **Children and Families.**

Chapter 4
Commercial Law

Karen Cochrane-Brown (KCB), Wendy Graf (WLG), Trina Griffin (TG),
Esther Manheimer (EM), Walker Reagan (WR), Steve Rose (SR)

Enacted Legislation
Business

Eliminate Processing Fee Notice in the Uniform Commercial Code, Article 3

S.L. 2000-118 (HB 1021) amends G.S. 25-3-506, which allows for the collection of a processing fee for returned checks. This act eliminates the requirement that a person who accepts a check in payment for goods and services give notice before a processing fee may be collected.

This act becomes effective October 1, 2000. (WLG)

Clarify Predatory Lending Law

S.L. 2000-140, Secs. 40(a)-(c) (SB 1335) clarify the 1999 law which addressed predatory lending in the State. Most of the changes clarify that certain fees remain permissible, including interest rate lock fees, fees for administration of construction loans, fees associated with government insured and guaranteed loans, and fees for conversion of loans from open-end to closed end or from variable to fixed-rate. This act clarifies that certain authorized fees may consist of one or more individual charges as long as the aggregate does not exceed the authorized total. It also clarifies the section limiting deferral fees to resolve an ambiguity about whether the provision authorized one or multiple fees. These provisions make clear that only one fee was intended.

These sections became effective July 21, 2000. (KCB)

No Shift of Lender Liability

S.L. 2000-140, Sec. 40.1 (SB 1335) prohibits a lender from shifting any loss, liability or claim to the closing agent or closing attorney for violation of the law prohibiting predatory lending.

This section became effective July 21, 2000. (KCB)

Control Share Acquisition Act and Shareholder Protection Act Opt-Out

S.L. 2000-140, Secs. 44 and 47 (SB 1335) provide that a North Carolina corporation currently subject to the provisions of the Control Share Acquisition Act and/or the Shareholder Protection Act may adopt a bylaw stating that the provisions of either act shall not be applicable to the corporation. The bylaw may be adopted on or after September 1, 2000 and on or before December 31, 2000.

These sections became effective July 21, 2000. (KCB)

Revise Article 9 of the UCC

S.L. 2000-169 (SB 1305) rewrites Article 9 of the Uniform Commercial Code, Secured Transactions, to conform to Revised Article 9 adopted by the National Conference of Commissioners on Uniform State Laws. Revised Article 9 expands the scope of property and transactions covered by current Article 9, modifies as well as creates definitions, modernizes the filing system for financing statements, simplifies methods of perfection and increases the certainty of priority rules, formulates clearer rules for the enforcement of security interests, and provides specific transition rules.

This act makes the following significant changes to current law:

- Brings within the scope of Article 9 several kinds of collateral previously left to the common law, including deposit accounts, health-care insurance receivables held by healthcare providers, commercial tort claims, agricultural liens, sales of payment intangibles, and promissory notes.
- Covers all consignments except small and consumer consignments.
- Requires only one filing in most cases and provides that all financing statements be filed centrally with the Secretary of State except for fixture filings, which will continue to be filed with Register of Deeds, and anticipates that filings may be made electronically.
- Requires filings to be made at the location of the debtor (for example, where corporate charter is filed or registered) not where the property is located.
- Simplifies requirements for using electronic signatures.
- Facilitates electronic filing by providing uniform statutory forms and eliminates the requirement that debtors sign an authorized financing statement.
- Perfection of security interest by control is extended to letter of credit rights and deposit accounts as well as investment property.
- Eliminates special nonuniform procedure found in Part 6 for conducting a public sale that is conclusively presumed to be commercially reasonable, but revised Article 9 sets out a "safe harbor" form for giving notice of a public or private sale.
- Requires a secured party to give notice of sale to the other secured parties.
- Provides that a consumer is entitled to disclosure of the amount of deficiency assessed against him or her and the method for calculating the deficiency.
- Prohibits a secured creditor from accepting collateral as partial satisfaction of a consumer obligation.
- Includes new rules dealing with secondary obligors such as guarantors.
- Provides that a security interest perfected under former Article 9 will remain perfected under revised Article 9, though not necessarily for the period it would have remained effective under former Article 9.
- Changes from two to three days the time period the filing office has to number, index, communicate information in the records and acknowledge filing. This act delays the effect of new the three-day requirement to January 1, 2003.

Effective September 1, 2000, this act also increases fees for filing and indexing of financing statements, assignments, or release of collateral with the Secretary of State from $15 to $30.

This act directs the Secretary of State to study the issue of fraudulent filings under Article 9, that are intended to hinder, harass, delay, or otherwise interfere with public employees in the performance of their lawful duties. The Secretary is to report to the General Assembly by January 1, 2001 any recommendations, including the creation of civil or criminal sanctions or remedies related to these fraudulent filings. (See also **Studies**.)

This act becomes effective July 1, 2001 except the fee increase became effective September 1, 2000 and the study directive became effective August 2, 2000. (WR)

Energy Division, Commerce Department

Authorization to Reallocate Previously Appropriated Petroleum Overcharge Funds

S.L. 2000-67, Sec. 14 (HB 1840). See **State Government.**

Energy Conservation Projects in State-Owned Buildings

S.L. 2000-67, Sec. 14.1 (HB 1840). See **State Government.**

Petroleum Overcharge Funds Allocation

S.L. 2000-67, Secs. 14.2(a)-(e) (HB 1840). See **State Government.**

Energy Division Study of Residential Energy Conservation Assistance Program

S.L. 2000-67, Secs. 14.14(a)-(c) (HB 1840). See **State Government.**

Cap on Residential Energy Conservation Assistance Program Spending

S.L. 2000-67, Sec. 14.15 (HB 1840). See **State Government.**

Transfer Energy Division from Department of Commerce to Department of Health and Human Services and Department of Administration

S.L. 2000-67, Sec. 14.18 (HB 1840) and S.L. 2000-140, Sec. 76 (SB 1335). See **State Government.**

Utilities

Extend Electric Service Study Commission

S.L. 2000-53 (HB 1593) extends life of the Study Commission on the Future of Electric Service in North Carolina. Under the current law, S.L. 1997-40, the Study Commission ended upon the filing of its report to the General Assembly on May 16, 2000. However, seven of the nine recommendations of the Study Commission require further action, including the recommending of specific legislation to the 2001 General Assembly and the 2003 General Assembly.

This act became effective May 1, 2000. (SR)

Public Utility Regulatory Fee

S.L. 2000-109 (HB 1854). See **Taxation.**

NC Electric Membership Corporation Regulatory Fee

S.L. 2000-109 (HB 1854). See **Taxation.**

Increase Fee for Emergency Planning

S.L. 2000-109 (HB 1854). See **Taxation.**

Renewable Energy Manufacturing Credit

S.L. 2000-128 (HB 1473). See **Taxation.**

Controlling Telephone Solicitations

S.L. 2000-161 (HB 1493), mirroring the federal law regarding telephone solicitation, requires each telephone solicitor doing business in this State to remove residential telephone subscribers from their contact list when the residential subscriber requests to be removed from the contact list. The North Carolina Utilities Commission must require local carriers to notify their residential subscribers of the provisions in this act, of the federal laws pertaining to telephone solicitation, and of the private industry programs of the same nature (e.g. Direct Marketing Association). The North Carolina Utilities Commission must require notification be placed at least once a year in the telephone bills of residential telephone subscribers and conspicuously published in telephone books. Telephone solicitation does not include calls made with the permission of the person called; made to persons with whom the solicitor has an established, business relationship; or made by or on behalf of tax-exempt nonprofit organizations.

Additionally, this act requires telephone solicitors to:

- Identify the business, individual or entity initiating the call and the person making the call (identify themselves by their name);
- Upon request, state the telephone number or address of the entity initiating the call;
- Terminate the call if the telephone subscriber does not consent to the solicitation;
- Establish procedures to prevent further calls to persons who request not to be called again;
- Restrict their calls to the hours between 8:00 a.m. and 9:00 p.m.;
- Not block the telephone subscribers' caller identification; and
- Keep a record of each caller's legal and fictitious name, address, telephone number, and job title.

This act authorizes the Attorney General to investigate solicitors who violate the provisions described in the above section. The Attorney General may impose a civil penalty of not more than $500 for each violation and may seek equitable relief to restrain further violations. In determining the amount of the civil penalty or whether to waive the penalty for the first violation, the court must consider all relevant circumstances.

This act also grants persons receiving more than one solicitation within a twelve-month period from the same solicitor in violation of this act the right to enjoin the solicitor and sue for $500 in damages for each violation. Prevailing plaintiffs are entitled to attorney fees. Conversely, prevailing defendants may be awarded attorney fees if the court finds that the plaintiff knew or should have known that the action was frivolous and malicious. Citizens may also initiate an action in State court to enforce the provisions of federal law regarding telephone solicitation.

This act becomes effective October 1, 2000 and applies to all telephone directories published and all telephone calls made on or after that date. (EM)

Miscellaneous

Organizational Changes

S.L. 2000-140, Secs. 79 and 93.1 (SB 1335) change the name of two state agencies.

- The Division of Travel and Tourism, within the Department of Commerce, is renamed the Division of Tourism, Film, and Sports Development.
- The Office of State Budget and Management is renamed the Office of State Budget, Planning, and Management.

These changes become effective September 30, 2000. (EC)

Video Poker Machines Illegal

S.L. 2000-151 (SB 1542). See **Criminal Law and Procedure.**

Film Industry Incentives

S.L. 2000-153 (SB 1460). See **Taxation.**

Studies
Legislative Research Commission

Economic Development Issues

S.L. 2000-138, Sec. 2.1(5) (SB 787) authorizes the Legislative Research Commission to study the State's travel and tourism industry and the economic benefits of that industry. Findings and recommended legislation may be reported to the 2001 General Assembly. (SR)

Fraudulent Filings under Article 9 of the UCC

S.L. 2000-169 (SB 1305) directs the Secretary of State to study the issue of fraudulent filings under Article 9, that are intended to hinder, harass, delay, or otherwise interfere with public employees in the performance of their lawful duties. The Secretary is to report to the General Assembly by January 1, 2001 with any recommendations, including the creation of civil or criminal sanctions or remedies related to these fraudulent filings. (WLG)

Chapter 5
Constitution and Elections

Bill Gilkeson (WRG)

Enacted Legislation
Elections

Election Board Conduct

S.L. 2000-114 (SB 1290) prohibits members of county, municipal, and State boards of elections from making oral or written statements intended for general distribution to the public at large supporting or opposing the nomination or election of candidates on the ballot within the territory covered by the board. The same prohibition applies to statements by board members supporting or opposing the passage of referendum proposals. This act places these provisions in a new Article 4A in Chapter 163. Violation of the Article carries no criminal penalty, but could be grounds for removal of a board member.

This act becomes effective January 1, 2001, if it is approved by the United States Justice Department under Section 5 of the Voting Rights Act. (WRG)

Lobbyist Fund-Raising / One-Stop Voting

S.L. 2000-136 (SB 767) does the following:

- Amends current law limiting lobbyist-related political fundraising during legislative sessions to conform to a recent court decision and to provide for greater enforceability without defying the decision. North Carolina law prohibits the making, soliciting, or accepting of contributions by lobbyists or political committees connected with lobbyists' principals to candidates for the Council of State or General Assembly while the General Assembly is in regular session. Prior to the enactment of this act, a lobbyist-related contribution could not go to a "political committee the purpose of which is to assist" a candidate or candidates for Council of State or General Assembly. The State Court of Appeals in *Winborne v. Easley*, 523 S.E.2d 149 (1999) ruled that extending the ban on contributions to such political committees violated the First Amendment. Otherwise, the court said, the statute was constitutional. This act removes the provision the court struck down. However, the act does provide that the "real or purported agent" of a legislative candidate may not accept lobbyists' contributions during session. The court approved a prohibition already in the statute against the "real or purported agent" of a candidate soliciting a lobbyist contribution.
- Provides that if a county board of elections cannot reach unanimity on a plan for multiple sites for One-Stop absentee voting, a member or members of the county board may petition the State Board of Elections, which could then develop a plan.
- Appropriates funds to the State Board of Elections to provide grants to counties for the operation of multiple One-Stop sites. The State Board is required to award the grants by September 15, 2000.

This act became effective on July 17, 2000. It became enforceable when it was precleared by the United States Justice Department under Section 5 of the Voting Rights Act, on August 1, 2000. (WRG)

Technical Corrections

S.L. 2000-140, Secs. 36, 81, 82, 83, 84 (SB 1335) correct statutes concerning elections enacted in the 1999 Session. Specifically:

- Section 36 updates the references to precincts used in defining a set of Superior Court judicial districts in New Hanover and Pender counties. The 1999 legislation divided District 5 into Districts 5A, 5B, and 5C. They were to go into effect January 1, 2003, and would be used to elect judges in the 2002 election. When the provision was enacted, it was assumed that the counties would be able to designate their 2000 precincts by May 1, 1999, under the Census Redistricting Data Program. The program was delayed, however, until later in 1999. The correction moves the reference date for precincts up to December 1, 1999.
- Section 81 gives more options to county boards of elections in situations where they need to adjust precincts they have designated in the Census Redistricting Data Program. This section gives the Executive Secretary-Director of the State Board of Elections the authority to allow counties to correct precinct lines they have designated inaccurately and to adjust precinct lines where the Census Bureau has deemed the features they followed unacceptable. This section empowers county boards of elections to move precincts off of township lines that have moved to a place that the county board considers unacceptable.
- Section 82 corrects an oversight in the scope provision of Article 22A of Chapter 163 of the General Statutes, the Campaign Finance Act. The scope provision, enacted in 1999, clarifies that the Article applies only to elections to North Carolina offices, and not to federal or other States' offices. The scope provision, however, neglected to say that the Article also applies to North Carolina referenda, which are non-candidate ballot contests. The Article contains several provisions that apply to referenda and provides a definition of "referendum."
- Section 83 corrects a provision in G.S. 163-278.39A, which requires personal appearances by the sponsors of political advertisements on radio and television. The statute, popularly known as "Stand by Your Ad," prescribes a script of acknowledgement for the sponsor to deliver on the air. The provision in question could be read to require that the sponsor-delivered radio-TV script would be *in addition to* labeling that is required in another part of this act for all ads. The correction clarifies that to the extent the "Stand by Your Ad" sponsor-delivered script provides the same information as the other labeling requirement, the "Stand by Your Ad" statement satisfies the other requirement.
- Section 84 clarifies that the "Stand by Your Ad" requirements do not create criminal liability. The 1999 legislation said no criminal liability "for any person." That formulation neglected to account for the peculiar definition of "person" in the Campaign Finance law, of which "Stand by Your Ad" is a part. In that law, "person" is defined as not including an individual. The correction just states no criminal liability, period.

These sections became effective July 21, 2000. Sections 81, 82, 83, and 84 will be implemented when they are approved by the United States Justice Department under Section 5 of the Voting Rights Act. (WRG)

Studies
Referrals to Existing Commissions/Committees

Second Primary Study Referred to Election Laws Study Commission

S.L. 2000-138, Sec. 3.1 (SB 787). The Election Laws Study Commission (also known as "Election Laws Revision Commission") is directed to study second primary elections, the cost to taxpayers to conduct second primaries, voter turnout, impact on elections, and related matters. The Commission may report its findings to the 2001 General Assembly.

Chapter 6
Criminal Law and Procedure

Al Andrews (AA), Brenda Carter (BC), Walker Reagan (WR), Mary Shuping (MS), Susan Sitze (SS), Rick Zechini (RZ)

Enacted Legislation

Ban Private Prisons Housing Out-of-State Inmates

S.L. 2000-67, Secs. 16.3(a)-(b) (HB 1840) repeal a temporary moratorium on the operation of prison facilities housing out-of state inmates and creates a new statute, G.S. 148-37.1, which bans these types of facilities. The new statute prohibits the authorization, construction, ownership or operation of any type of correctional facility for the confinement of inmates serving sentences for violation of the laws of a jurisdiction other than North Carolina. An exception is provided for facilities owned or operated by the federal government and used exclusively for the confinement of inmates serving sentences for violation of federal law, but this exception is only intended to allow those prisons that the United States Constitution prohibits the State from banning.

These sections became effective June 30, 2000. (SS)

Traffic Law Enforcement Statistics

S.L. 2000-67, Secs. 17.2(a)-(b) (HB 1840) require the collection of further information regarding individual traffic stops. The additional data shall include: the date the stop occurred; the officer's agency and a personal identifier; if a State Trooper performed the stop, the State Highway Patrol District where the stop occurred, and if another type of law enforcement officer performed the stop, the city or county where the stop occurred.

Law enforcement officers performing traffic stops will be identifiable by agency-assigned anonymous identification numbers. The correlation between the identification numbers and the officers' names shall not be a public record. Only a court can order disclosure of this information.

These sections became effective August 1, 2000. (AA)

Certification of Department of Correction Employees

S.L. 2000-67, Secs. 17.3(a)-(c) (HB 1840) direct the North Carolina Criminal Justice Education and Training Standards Commission (CJETSC) to establish and implement a new certification system for employees in the Department of Correction. This reimposes a requirement initially set out in Section 18.14 of S.L. 1999-237, when CJETSC was directed to implement the new certification system for correctional employees by July 1, 2000. If the CJETSC fails to meet the new implementation deadline of January 24, 2001, then the Commission's authority over correctional employees will be repealed effective June 30, 2001. Should the Commission fail to act, Chapter 17C of the General Statutes will be amended to remove State correctional officers, probation/parole officers, probation/parole intake officers, probation/parole officers-surveillance, probation/parole intensive officers, and parole case analysts from the definition of "criminal justice officers" that are subject to minimum educational and training standards set by the Commission. In addition, the Secretary of Correction will no longer serve as a member of CJETSC.

Although these sections became effective July 1, 2000, the statutory changes authorized in this section are contingent upon the actions of the Criminal Justice Education and Training Standards Commission and will not become effective prior to June 30, 2001. (BC)

Transfer Certain Programs and Positions to the Office of Juvenile Justice

S.L. 2000-67, Sec. 19 (HB 1840) transfers The Center for Prevention of School Violence from The University of North Carolina to the Office of Juvenile Justice, effective July 1, 2000.

S.L. 2000-67, Sec. 19.1 (HB 1840) transfers three positions and the sum of $225,000 appropriated for the support of the Juvenile Information Network, from the Department of Justice to the Office of Juvenile Justice, effective July 1, 2000. (See also **Employment.**)

S.L. 2000-67, Sec. 19.7 (HB 1840) transfers the Guard Response Alternative Sentencing Program from the Department of Crime Control and Public Safety to the Office of Juvenile Justice, effective July 1, 2000.

Note: S.L. 2000-137 (HB 1804) established the Department of Juvenile Justice and transferred all functions of the Office of Juvenile Justice to the new Department, effective July 13, 2000. (SS)

Revise Requirements of Multifunctional Juvenile Facility

S.L. 2000-67, Sec. 19.5(a) (HB 1840) provides that the Office of Juvenile Justice shall house only juveniles who are in the North Carolina juvenile justice system in multifunctional juvenile facilities. Multifunctional juvenile facilities are facilities used by the Office of Juvenile Justice to provide services to and house juveniles, but which are constructed and operated by a private entity.

This section became effective July 1, 2000. (SS)

Jail Fee for Local Governments

S.L. 2000-109, Sec. 5 (HB 1854). See **Taxation**.

Commercial Vehicle Careless Driving Penalties

S.L. 2000-109, Secs. 7(a)-(g) (HB 1854) establish a Class 2 misdemeanor criminal offense if the driver of a commercial vehicle, carrying a load subject to oversize or overweight permits, speeds 15 mph or more either over the posted speed or the restricted speed set out in the permit or drives it recklessly or without due caution and circumspection. These sections make any of these misdemeanors a "serious violation" for purposes of disqualifying a person from driving a commercial vehicle, and assigns six points to the driver's record for committing any of these offenses.

These sections became effective July 5, 2000. (MS)

Drivers Points – No Child Restraint

S.L. 2000-117 (SB 1347) mandates the assessment of two drivers license points against any driver who violates the child restraint statute in addition to the current penalty of up to $25 (G.S. 20-137.1). G.S. 20-137.1 requires drivers to ensure that all passengers less than 16 years of age are properly secured in a child restraint system or seat belt. Children less than 5 years of age and less than 40 pounds in weight must be secured in a child passenger restraint system. If a vehicle has an active passenger-side air bag, a child less than 5 years of age and less than 40 pounds in weight must be secured in a child passenger restraint system in a rear seat, unless the child passenger restraint system is designed for use with air bags. All other passengers of less than 16 years of age must wear a seat belt.

This act becomes effective December 1, 2000. (RZ)

Prohibit Cyberstalking and Computer Viruses/Treat Domestic Violence

S.L. 2000-125 (HB 813) makes it a new Class 2 misdemeanor criminal offense to use electronic mail or electronic communication with the intent to threaten bodily harm, to repeatedly communicate with another for the purpose of abusing, annoying, threatening, harassing, or embarrassing any person, or to make false statements concerning the death, or injury of another person with the same intent. This provision mirrors the telephone harassment statute in G.S. 14-196.

This act also amends the probation statute to permit a judge to order, as a special condition of probation, the defendant to attend and complete an abuser treatment program approved by the Department of Administration, if the court finds the defendant responsible for the acts of domestic violence. This act makes a conforming change in the domestic violence statute to replace the requirement that the judge find that the abuser treatment program is available within a reasonable distance of the person's residence.

This act becomes effective December 1, 2000 and applies to offenses committed on or after that date. (WR)

Restraints in Facilities

S.L. 2000-129 (HB 1520). See **Health and Human Services.**

Modernize Bail Bond Forfeitures

S.L. 2000-133 (HB 1607). See **State Government.**

Reclassify the Controlled Substance, GHB

S.L. 2000-140, Sec. 92.2 (SB 1335) reclassifies Gamma hydroxybutyric acid (GHB) as a Schedule I controlled substance rather than a Schedule IV, and classifies certain drug products containing GHB as Schedule III controlled substances. This section also adds Gamma-butyrolactone to the list of precursor chemicals that are unlawful to possess or distribute with the intent to manufacture a controlled substance.

This section becomes effective December 1, 2000 and applies to offenses committed on or after that date. (SS)

Indigent Defense Services/Funds

S.L. 2000-144 (SB 1323). See **State Government.**

Video Gaming Machines Regulation

S.L. 2000-151 (SB 1542) establishes new prohibitions, registration requirements, and reporting requirements for video gaming machines (machines). This act also increases the penalties for violating gaming laws and creates a study of the implementation of this act.

Background. North Carolina law, allows pursuant to G.S. 14-306(b)(2), operation of machines that limit to eight the number of accumulated credits or replays that may be played at one time and that award free replays or paper coupons exchangeable for prizes or merchandise valued at or less than $10, but not exchangeable or convertible to money. Machines that do not give replays, credits, or coupons are legal as well. Machines that give cash payouts are illegal.

General Regulation and Prohibitions. This act amends Chapter 14 of the General Statutes by adding a new section (G.S. 14-306.1) that regulates the machines. A “video gaming machine” is

defined as a slot machine, as defined in G.S. 14-306(a), and other forms of electrical, mechanical, or computer games, such as video poker, that require coin or token deposit, or use of a credit card, debit card, or other method of payment to activate play. The definition of "video gaming machine" excludes a machine operated and played for amusement that involves the use of skill or dexterity to solve problems or tasks or to make scores or tallies and does not, issue, display, or otherwise record any form of record capable of being redeemed, exchanged, or repurchased for cash, cash equivalent, or prizes, or does not award free replays.

The new G.S. 14-306.1 makes it unlawful, effective August 2, 2000, for any person to operate, allow to be operated, place into operation, or keep in that person's possession for the purpose of operation any machine unless the machine was in lawful operation and available for play within North Carolina on or before June 30, 2000, and was listed in the State by January 31, 2000 for ad valorem taxation for the 2000-2001 tax year.

Effective October 1, 2000, this act limits to three the number of machines that a person may operate, allow to be operated, place into operation, or keep in possession for the purpose of operation at one location. Effective October 1, 2000, the following are also prohibited:

- A person under the age of 18 playing a machine (a violation is an infraction, which is a noncriminal violation of law not punishable by imprisonment).
- An operator of a machine knowingly allowing a person under the age of 18 to play a machine.
- The operation of or allowing the operation of any machine during the hours of 2:00 A.M. Sunday through 7:00 A.M. Monday.
- The operation of a machine that is not in plain view of persons visiting the premises.
- Advertising the operation of machines by use of on-premise or off-premise signs.

Effective September 1, 2000, it is unlawful to warehouse machines, except in conjunction with the permitted assembly, manufacture, and transportation of these machines.

Effective October 1, 2000, each location where it is lawful to operate machines must be at least 300 feet away from any other location where other machines are located. A "location" is defined as a permanent building having or being within a single exterior structure. However, two or more places where machines were lawfully operated under separate ownership on June 30, 2000 shall be considered to be separate locations more than 300 feet from each other, regardless of the distance from each other or whether they are located in the same building or edifice. Machines may be operated only within permanent buildings. Counties and municipalities are explicitly not preempted from adopting ordinances that more stringently regulate the machines.

Effective October 1, 2000, a machine that is lawful under G.S. 14-306(b)(2) must have affixed to it in view of the player a sticker informing the player that it is a criminal offense with the potential of imprisonment to pay more than that which is allowed by law. In addition, if the machine has an attract chip that allows programming, the static display shall contain the same message.

This act clarifies that the exemption provided by G.S. 14-306(b)(2) does not apply to a machine that pays off in cash. The exemption provided by G.S. 14-306(b)(2) also does not apply where the prizes, merchandise, credits, or replays are either repurchased for cash or rewarded for cash, exchanged for merchandise of a value more than $10, or where there is a cash payout of any kind by the person operating or managing the machine or the premises, or any agent or employee of that person. Any person making an unlawful payout is subject to punishment under G.S. 14-309 (discussed below). These provisions are effective October 1, 2000.

The prohibitions and registration and reporting requirements contained in G.S. 14-306.1:

- Do not apply to assemblers, manufacturers, and transporters of machines who assemble, manufacture, and transport them for sale in another state so long as the machines, while located in North Carolina, cannot be used to play the prohibited games.
- Do not apply to those who assemble, manufacture, and sell such machines for the use only by a federally recognized Indian tribe if such machines may be lawfully used on Indian land under the Indian Gaming Regulatory Act.

- Do not make any activities of a federally recognized Indian tribe unlawful or against public policy if the activities are otherwise lawful for any federally recognized Indian tribe under the Indian Gaming Regulatory Act.

Registration and Reporting Requirements. The owner of a machine must register the machine by October 1, 2000 with the Sheriff of the county in which the machine is located using a standardized registration form supplied by the Sheriff. The registration form must be signed under oath and a material false statement in the registration form shall subject the owner to seizure of the machine in addition to any other punishment imposed by law. If the machine is moved to a different location, the owner is required to reregister the machine with the appropriate Sheriff prior to its being placed in operation. The registration form must include, at a minimum:

- Evidence of the date on which the machine was placed in operation.
- The serial number of the machine.
- The location of the facility at which the machine is operated.
- The name of the owner of the facility.

Each Sheriff is required to report to the Joint Legislative Commission on Governmental Operations (Governmental Operations) no later than November 1, 2000 on the total number of machines registered in that county, itemizing how many locations have one, two, or three machines.

The owner of each machine or the agent of that owner must report each calendar quarter to the Department of Revenue (Revenue) the total amount of gross receipts itemized by each machine, the number of machines at that location, and the total value of prizes and merchandise awarded to players of each machine at that location. The first such report is due April 15, 2001. Failure of the owner or agent to timely file the required report, or filing a report containing a material false statement, shall subject the owner of the machine to seizure of the machine in addition to any other punishment imposed by law. Upon request of a Sheriff, Revenue shall forward a copy of the report to the Sheriff of the county where the machines are located. Revenue shall compile the reports and provide a quarterly summary to Governmental Operations. Revenue may retain an amount equal to the costs of fulfilling its duties under this act from the revenue collected under Article 4 of Chapter 105 of the General Statutes for the 2000-2001 fiscal year.

The North Carolina Sheriffs' Association, Inc., after consultation with the Division of Alcohol Law Enforcement and the Conference of District Attorneys of North Carolina, shall report to Governmental Operations no later than January 1, 2001, its cost estimates for registration process and enforcement, suggested fees to make registration and enforcement self-supporting, and recommendations for a system with registration at the State level and primary enforcement at the local level.

Penalties. Under the new G.S. 14-309(a) any person who violates any provision of G.S. 14-304 through G.S. 14-309 is guilty of a Class 1 misdemeanor for the first offense, a Class I felony for a second offense, and a Class H felony for a third or subsequent offense. However, the new G.S. 14-309(b) provides that a violation of the provisions of G.S. 14-306.1 involving the operation of five or more video gaming machines is a Class G felony.

A person convicted under G.S. 14-309(a) once may not possess any machines for a period of one year, twice may not possess any machines for a period of two years, three or more times may not possess any machines.

This act also clarifies that a violation of G.S. 14-306.1 is a violation of the gambling statutes for purposes of G.S. 18B-1005(a)(3). G.S. 18B-1005(a)(3) provides that it is unlawful for an ABC permitee, or the permitee's agent or employee, to knowingly allow a violation of the gambling statutes on the licensed premises.

Law enforcement officers may seize and destroy any machine prohibited by G.S. 14-306 or G.S. 14-306.1. This provision became effective August 2, 2000 while the other penalty provisions are effective October 1, 2000.

Effective Dates. The effective dates of the individual provisions are noted in the text of this summary. This act became effective on August 2, 2000. (RZ)

Criminal Record Checks/Long-Term Care

S.L. 2000-154 (SB 1192). See **Senior Citizens.**

Interlock/Open Container Changes

S.L. 2000-155 (HB 1499) makes the following changes to the motor vehicle laws:

Ignition Interlock Changes. Under current law, a person's license is revoked if they are convicted of driving while impaired, and:

- The person had an alcohol concentration of 0.16 or more; or
- The person had been convicted of another offense involving impaired driving within the preceding seven years of the offense for which the person's license has been revoked.

When DMV restores the license of such person, in addition to any other restriction, the person is required to operate a vehicle with ignition interlock.

This act adds language designating at what Blood Alcohol Concentration (BAC) level the ignition interlock must be set when installed. This new language clears up an inconsistency that previously existed with other statutes.

This act also adds new language requiring a person subject to the ignition interlock requirement to install an ignition interlock on ALL registered vehicles owned by that person, unless DMV determines that one or more of the vehicles is relied upon by another member of that person's family and is not in the possession of the person subject to the ignition interlock requirement. However, if a person subject to the ignition interlock requirement is charged with Driving While License Revoked (DWLR) solely because he/she does not have an ignition interlock on one of his/her registered vehicles, and there is no other violation alleged, the court may make a determination that the vehicle was relied upon by another member of the person's family and was not in the possession of the person subject to the ignition interlock requirement. If the court makes this determination then the court shall find the person not guilty of DWLR.

This act also clarifies that an alcohol concentration report from an ignition interlock device is only admissible when the defendant actually drove the vehicle at the time the BAC reading was over that person's BAC restriction.

Open Container Changes. This act changes prior law by making it an infraction for passengers to have open containers of beer or unfortified wine in a vehicle when the driver has not been drinking. This section of this act became effective September 1, 2000 and expires September 30, 2002.

This act provides an exception when either:

- The vehicle is designed, maintained, or used primarily for the transportation of person's for compensation.
- The open container is in the living quarters of a house trailer, motor home, or house car.

This act also requests the Attorney General to initiate litigation to challenge Section 154 of Title 23 of the United States Code, the federal statute linking the transfer of federal highway money to a requirement that states ban open containers in all motor vehicles, on the basis that the federal statute is an unconstitutional intrusion on NC's authority to enact and enforce its own laws regarding motor vehicles and traffic safety.

Other Changes. This act, through technical changes, eliminates previous inconsistencies between some motor vehicle statutes. Effective August 2, 2000, this act also amends the effective date of S.L. 1999-330, which dealt with commercial vehicle highway safety and work zone safety. This act changes the effective date to September 1, 2000 to the portion of the law that deals with financial responsibility for operating a commercial motor vehicle. That portion is applicable to new or renewal policies effective on or after that date.

Effective Dates. Any provision of this act, for which a specific effective date is not mentioned, became effective September 1, 2000 and applies to offenses committed on or after that date. (SS)

Amend Bail Bondsmen and Runners Law

S.L. 2000-180 (HB 1608) requires all bail bondsmen and runners, who have held their licenses for less than 12 months, to be supervised and employed by or contracted with a supervising bail bondsman for a period of 6 consecutive and 12 total months. The supervisory bail bondsman must notify, in writing, the Commissioner of Insurance (Commissioner) when the one-year period of supervision is completed. The supervisory bail bondsman must also notify the Commissioner if the employment or contract is terminated and the reasons for termination. Based on the circumstances of the termination, the Commissioner may take adverse administrative action, recommend criminal prosecution, or credit the period of time the licensee was supervised toward the licensee's completion of the supervision requirement.

If, after exercising due diligence, a first-year licensed bail bondsman or runner is unable to obtain employment under or contract with a supervising bail bondsman, he/she must submit to the Department of Insurance a sworn affidavit stating the relevant facts and circumstances, and the Department shall determine whether he/she may operate unsupervised. In addition, a first year licensee cannot become a supervising bail bondsman during the first two years of licensure. Applicants for licensure previously licensed for a period of at least 18 months, but either inactive or unlicensed for a period of not more than 3 consecutive years, are not required to complete the supervisory period.

This act also:

- Requires that collateral security be held and maintained in trust.
- Requires collateral security received in the form of cash, check, or other negotiable instrument be deposited in a separate non-interest bearing account in a bank in the State and cannot be commingled with other operating funds.
- Makes it a Class I felony for a bail bondsman to knowingly and willfully fail to return collateral security exceeding $1,500 in value. Collateral security, such as personal and real property, must be returned under the same conditions as requested and received by the bail bondsman.
- Provides that if a licensed bail bondsman dies, becomes incapacitated, or becomes incompetent, a person acting on behalf of the bail bondsman may contract with another licensed bail bondsman to handle the former bail bondsman's obligations to the satisfaction of the courts.
- Increases the minimum security a professional bondsman must deposit with the Department of Insurance in order to be licensed from $5,000 to $15,000.

This act becomes effective October 1, 2000. (AA)

Concealed Handgun Permit / Decrease Renewal Fees

S.L. 2000-191 (HB 1508) does the following:

- Amends G.S. 14-415.16 to eliminate the requirement that fingerprints be taken for a renewal application for a concealed handgun permit when the fingerprints have been submitted to Automated Fingerprint Information System (AFIS) administered by the State Bureau of Investigation after June 30, 2001.
- Reduces the renewal fees for concealed handgun permits from $80 to $75 and reduces the portion of this fee paid to the State from $40 to $35. This act also extends the length of the permit from four years to five years.
- Clarifies that the original or photocopy of a medical records release signed by the applicant for a concealed handgun permit is to be accepted by mental health institutions and that the documents are to be released to the sheriff promptly.

This act became effective August 1, 2000. The extension of permits to five years applies to permits issued or renewed on or after August 1, 2000. (WR)

Studies

Study Video Gaming Machines Regulation

S.L. 2000-151, Sec. 6 (SB 1542) directs the Legislative Research Commission to study the implementation of the new regulations governing video gaming machines, as enacted by S.L. 2000-151 and recommend any changes it deems necessary in order to strengthen the regulations. The Legislative Research Commission must report to the 2001 General Assembly no later than April 1, 2001.

Chapter 7
Education

Kory Goldsmith (KG), Sara Kamprath (SK)

Enacted Legislation
Public Schools

The Hurricane Floyd Recovery Act of 1999

S.L. 1999-463 (1999 Extra Session) (HB 2). See **State Government.**

Use of Staff Development Funds/Mentor Training

S.L. 2000-67, Sec. 8.1 (HB 1840) directs each school to amend its school improvement plan to allow a portion of staff development funds for use in mentor training and to provide release time and substitute teachers during meetings between mentors and teachers being mentored.

This section became effective July 1, 2000. (SK)

Class-Size Computation for K-2

S.L. 2000-67, Sec. 8.8 (HB 1840) directs local school administrative units to hire classroom and reading teachers with allocated teacher positions for kindergarten through second grade and to otherwise reduce the student-teacher ratio in those grades.

This section became effective July 1, 2000. (SK)

National Board for Professional Teaching Standards Certification

S.L. 2000-67, Sec. 8.16 (HB 1840) codifies the State's efforts to support teachers who are seeking national certification from the National Board for Professional Teaching Standards. (See G.S. 115C-292.2). This section directs the State to provide up to three days of approved paid leave, pay the participation fee, and pay a significant salary differential to the teachers who attain the certification. This section requires teachers who do not complete the process and teachers who do not teach for a year after completing the process to repay the State. The State Board of Education shall adopt policies to implement this section.

This section became effective July 1, 2000. (SK)

Reduction of Paperwork in Public Schools

S.L. 2000-67, Secs. 8.18(a)-(c) (HB 1840), as amended by S.L. 2000-140 (SB 1335), provide that a teacher shall have access to the information contained in the student information management system (SIMS) in order to expedite report preparation. Also, these provisions prohibit a local board, superintendent or principal from requiring a teacher to provide information already available in SIMS, providing the same written unchanged information more than once during a school year, or to complete forms not required under the federal Individuals with Disabilities Act (IDEA). However, a local board may require information already available or duplicate information if the local board can show a compelling need. These provisions also direct each local board to appoint a person or a committee to monitor the amount of paperwork the central office requires of teachers. Finally, these provisions direct the State Board of Education to review reporting requirements for local school administrative units for duplication, develop

a paperless SIMS, and find ways to cut the paperwork and cost of complying with IDEA and other special education requirements. (See also **Studies.**)

These sections became effective July 1, 2000. (SK)

Guidelines for Charter School Expanded Enrollment

S.L. 2000-67, Sec. 8.23 (HB 1840), amending G.S. 115C-238.29D(d) governing enrollment growth in charter schools, provides that an enrollment growth of a charter school greater than 10% of the previous year's enrollment is a material revision of the charter. This section authorizes the State Board to approve an enrollment growth greater than 10% if:

- Actual enrollment is within 10% of the maximum authorized enrollment.
- The charter school has commitments for 90% of the requested growth.
- The board of education affected by the charter school's growth has had an opportunity to be heard by the State Board on the adverse impact of the proposed growth.
- The charter school is not currently identified as low-performing.

This section became effective July 1, 2000. (SK)

Encourage Retired Teachers to Return to the Classroom

S.L. 2000-67, Sec. 8.24 (HB 1840). See **Employment.**

Closing the Achievement Gap: State Board of Education

S.L. 2000-67, Secs. 8.28(a)-(i) (HB 1840) direct the State Board of Education to:

- Design an annual Minority Achievement Report Card.
- Develop guidelines to enable formation of local task forces to assist local boards and administration on closing the achievement gap.
- Develop a plan and five-year budget to meet specified needs of students who have limited proficiency in the English language.
- Develop a plan to establish a hotline and teams to collect and investigate complaints alleging disparate treatment of minority students and students from low-income families.
- Require reports by local administrative units by race, gender, and conduct, the number of student suspensions, expulsions, and placements in alternative programs during the past two school years.
- Perform various studies. (See also **Studies.**)

These sections became effective July 1, 2000. (SK)

Report Card on Teacher Education Programs

S.L. 2000-67, Sec. 9.2(a) (HB 1840) directs the State Board of Education to submit performance reports on teacher education programs to the Joint Legislative Education Oversight Committee by October 1 of each year, beginning with the 2000-2001 school year. The State Board of Education shall submit the 1999-2000 performance reports by December 15, 2000.

This section became effective July 1, 2000. (SK)

Closing the Achievement Gap: Department of Health and Human Services

S.L. 2000-67, Sec. 11.4A (HB 1840). See **Children and Families.**

Qualified Zone Academy Bonds

S.L. 2000-69 (HB 1539). See **Taxation.**

Charter School Fuel Exemption

S.L. 2000-72 (HB 1302). See **Taxation.**

Higher Education - Community Colleges

Expand Focused Industrial Training Program

S.L. 2000-67, Sec. 9 (HB 1840) directs the State Board of Community Colleges to expand the scope of the Focused Industrial Training Program to provide customized training programs for manufacturing industries and for companies involved in designing and programming computers and telecommunications.

This section became effective July 1, 2000. (KG)

Performance Budgeting/Clarifications

S.L. 2000-67, Sec. 9.7 (HB 1840), amending G.S. 115D-31.3, that governs performance budgeting, revises the criteria used to measure and reward community colleges for their performance. This section sets forth 12 new mandatory performance measures:

- Progress of basic skills students.
- Passing rate for licensure and certification examinations.
- Goal completion of program completers and noncompleters.
- Employment status of graduates.
- Performance of students who transfer to the university system.
- Passing rates in developmental courses.
- Success rates of developmental students in subsequent college-level courses.
- The level of student satisfaction for program completers and noncompleters.
- Curriculum student retention and graduation.
- Employer satisfaction with graduates.
- Client satisfaction with customized training.
- Program enrollment.

Each college must publish its performance on each measure, and the Community Colleges System Offices must publish the performance of all the colleges in its annual Critical Success Factors Report.

A college may carry forward one-third percent of that college's final General Fund appropriations for each of the first five measures (plus one of the other measures) that the college successfully attains. A college successful in attaining all six performance measures will be eligible to receive additional funds. The funds may be used to purchase equipment, provide initial program start-up costs, or provide one-time faculty and staff bonuses.

This section became effective July 1, 2000. (KG)

Community College Tuition/Legal Immigrants

S.L. 2000-67, Sec. 9.8 (HB 1840), amending G.S. 115D-39, that governs student tuition and fees for community colleges, provides that a nonresident of the United States who has resided in North Carolina for at least 12 months and has filed an immigrant petition with the United State Immigration and Naturalization Service shall be considered a State resident for purposes of being charged in-state tuition.

This section became effective July 1, 2000. (KG)

Funds for Training Programs for the Recruitment of Certified Nursing Assistants in Nursing Facilities

S.L. 2000-67, Secs. 11.11A(a)-(c) (HB 1840). See **Senior Citizens.**

Higher Education - Colleges & Universities

Bonds for Higher Education

S.L. 2000-3 (SB 912). See **Taxation.**

Report Card on Teacher Education Programs

S.L. 2000-67, Sec. 9.2(a) (HB 1840). See **Public Schools Enacted Legislation.**

UNC Need-Based Student Financial Aid Program

S.L. 2000-67, Sec. 10.1 (HB 1840) creates a new need-based student financial aid program for in-State students attending UNC constituent institutions. The North Carolina State Education Assistance Authority shall administer the new program. The program will provide financial aid to the institutions that enroll a disproportionate number of low-income students.

This section became effective July 1, 2000. (SK)

State Purchasing System Available to Private Universities

S.L. 2000-67, Secs. 10.9(a)-(b) (HB 1840) amend the State purchasing laws so that private universities can now purchase materials, supplies, and equipment according to the rules adopted by the Department of Administration.

These sections became effective July 1, 2000. (SK)

Transfer Center for Prevention of School Violence to Office of Juvenile Justice

S.L. 2000-67, Sec. 19 (HB 1840). See **Criminal Law and Procedure.**

UNC Appropriated Capital/Revenue Bonds

S.L. 2000-168 (HB 185). See **Taxation.**

UNC Millennial Campuses

S.L. 2000-177 (SB 586) authorizes the UNC Board of Governors to designate real property and appurtenant facilities to be part of a Millennial Campus and issue revenue bonds to pay for buildings, structures or other facilities on a Millennial Campus. A Millennial Campus would be associated with one or more of the constituent institutions of The University of North Carolina other than North Carolina State University (NCSU) or the University of North Carolina at Chapel Hill (UNC-CH). The purpose of a Millennial

Campus is to bring together business, industry, and academia like the Centennial Campus at NCSU and the Horace Williams Campus at UNC-CH.

This act also amends the Parental Savings Trust Fund (Fund), enacted the State Education Assistance Authority (Authority) in 1996, to encourage parents to save for postsecondary education expenses, to authorize contributions to the Fund in preferred or common stock. The Authority may deposit all or any part of the Fund for investment either with the State Treasurer in fixed income assets or with an investment manager(s) in preferred or common stock.

The section on Millennial Campuses became effective August 2, 2000. The section on the Parental Savings Trust Fund becomes effective July 1, 2001. (SK)

Lea Island State Natural Area/Reallocation of State Land

S.L. 2000-102 (HB 1617). See **Environment and Natural Resources.**

Technology

Information Technology Procurement

S.L. 2000-130 (HB 1564). See **Technology.**

UNC Appropriated Capital/Revenue Bonds

S.L. 2000-168 (HB 1853). See Taxation.

Studies

Legislative Research Commission

Regulation of Proprietary Schools/Study

S.L. 2000-67, Sec. 9.13 (HB 1840) directs the Legislative Research Commission (LRC) to study current State programs governing licensure and regulation of proprietary schools by the State Board of Community Colleges. The LRC shall consider:

- The appropriate agency to license and regulate proprietary schools.
- The personnel and funding needed to license and regulate proprietary schools.
- An appropriate fee schedule for proprietary schools.
- A plan for the effective enforcement of the law regarding the licensing and regulation of proprietary schools.

The LRC shall report the results of the study to the 2001 General Assembly.

Special Education Needs of Children Residing in Group Homes

S.L. 2000-138, Sec. 2.1(3) (SB 787) authorizes the Legislative Research Commission to study placement of children in group homes and provision of special education for those children. The Commission may report its findings to the 2001 General Assembly.

Referrals to Departments, Agencies, Etc.

Department of Public Instruction

S.L. 2000-138, Sec. 14.1 (SB 787) directs the Department of Public Instruction to study the following issue:

- Hunger Programs. See **Children and Families.**

State Board of Education

The State Board of Education has been directed to study the following issues:

- Teacher Assistant Salary Schedule. S.L. 2000-67, Sec. 8.13A (HB 1840).
- State and Local Funds Expended to Meet Compliance Standards of Individuals with Disabilities Act and State Law. S.L. 2000-67, Sec. 8.18(c) (HB 1840).
- Connection between the Identification of Minority and At-Risk Students As Students with Behavioral or Emotional Disabilities and the Gap in Student Achievement. S.L. 2000-67, Sec. 8.28(a) (HB 1840).
- Underrepresentation of Minority and At-Risk Students in Honors Classes, Advanced Placement and Academically Gifted Programs. S.L. 2000-67, Sec. 8.28(b) (HB 1840).
- School Calendar. S.L. 2000-138, Sec. 10.2 (SB 787).
- Integrated Curriculum. S.L. 2000-138, Sec. 10.3 (SB 787).

Community Colleges

The State Board of Community Colleges has been directed to study the following issues:

- Funding and Delivery of Distance Learning Programs. S.L. 2000-67, Sec. 9.6 (HB 1840).
- Internet Training Program for Certified Nursing Assistants. S.L. 2000-67, Sec. 11.11A (HB 1840). (See also **Health and Human Services Studies.**)

UNC Board of Governors

The UNC Board of Governors has been directed to study the following issues:

- Programs under the UNC Center for School Leadership Development. S.L. 2000-67, Sec. 10.11(a) (HB 1840).
- Principal Fellows Program. S.L. 2000-67, Sec. 10.11(b) (HB 1840).

Education Cabinet

The Education Cabinet has been directed to study the following issues:

- Best Practices for Closing the Achievement Gap for Minority and At-Risk Students. S.L. 2000-67, Sec. 8.28(i) (HB 1840).
- Public School, Community College, and University Programs Offered to High School Students. S.L. 2000-67, Sec. 9.2(b) (HB 1840).

Referrals to Existing Commissions/Committees

Commission On Children with Special Needs

S.L. 2000-67, Sec. 8.4 (HB 1840) directs the Commission on Children with Special Needs (Commission) to study when the headcount of children with special needs should be performed and the adequacy of a single head count during a school year. The Commission shall report to the 2001 General Assembly.

Education Oversight Studies

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

- Higher Education Compensation. S.L. 2000-67, Sec. 10.5 (HB 1840).

The JLEOC may study the following issues:

- Instruction Days. S.L. 2000-67, Sec. 5.6 (SB 787).
- International Studies and Global Education Programs. S.L. 2000-67, Sec. 10.6 (HB 1840).
- Public School Bidding Laws. S.L. 2000-138, Sec. 5.2 (SB 787).
- Textbook Distribution Methods. S.L. 2000-138, Sec. 5.3 (SB 787).
- School Counselors and Social Workers. S.L. 2000-138, Sec. 5.4 (SB 787).
- Foreign Language Instruction. S.L. 2000-138, Sec. 5.5 (SB 787).

Chapter 8
Employment

Karen Cochrane-Brown (KCB), Theresa Matula (TM), Giles Perry (GSP)

Enacted Legislation
General Employment

Criminal Record Checks/Long-Term Care

S.L. 2000-154 (SB 1192). See **Senior Citizens**.

Teachers and State Employees

Expanded Pap Smear Coverage and Plan Reinstatement Changes

S.L. 2000-184, Secs. 1-4 (SB 432). See **Insurance**.

Changes Regarding Prescription Drug Benefits

S.L. 2000-141 (HB 1855). See **Insurance.**

Elimination of Vacant Department of Health and Human Services Positions

S.L. 2000-67, Sec. 11.2 (HB 1840) directs the Department of Health and Human Services to eliminate 29 vacant positions effective November 1, 2000. Eliminated positions shall be neither those that impact direct patient care, services or safety nor positions at the State psychiatric hospitals, alcohol and drug abuse treatment center, Wright School or Whitaker School.

This section became effective July 1, 2000. (TM)

Certification of Department of Correction Employees

S.L. 2000-67, Sec. 17.3 (HB 1840). See **Criminal Law and Procedure.**

Transfer Certain Programs and Positions to the Office of Juvenile Justice

S.L. 2000-67, Sec. 19.1 (HB 1840) requires the Department of Justice to transfer to the Office of Juvenile Justice three positions and a sum of $225,000 for the support of the Juvenile Information System Network.

This section became effective July 1, 2000. (TM)

Office of Administrative Hearings Classification Study

S.L. 2000-67, Sec. 23B (HB 1840) requires the Office of State Personnel (OSP) to review and make classification recommendations regarding positions in the Office of Administrative Hearings. The OSP shall report its findings by January 31, 2001 to the Chief Administrative Law Judge, the Chairs of the Joint Appropriations Committee on General Government, and the Fiscal Research Division.

This section became effective July 1, 2000. (TM)

Deputy Industrial Commissioner Pay Equity

S.L. 2000-67, Sec. 26.16 (HB 1840) requires the Office of State Personnel to study salary equity in the Deputy Industrial Commissioner class. Deputy Industrial Commissioners are employed in the North Carolina Industrial Commission under the Department of Commerce. Depending on findings of the study, up to $35,000 from the Reserve for Compensation Increase may be transferred to the North Carolina Industrial Commission to address salary inequities.

This section became effective July 1, 2000. (TM)

Retirement

Firemen's Rescue Squad Workers' Pension Fund

Allow Additional Retroactive Membership in the North Carolina Firemen's and Rescue Squad Workers' Pension Fund

S.L. 2000-67, Secs. 26.17(a)-(b) (HB 1840) provide that any eligible member of a State-chartered fire department or rescue squad, who has not previously elected to join the Pension Fund, may apply for membership to the Fund on or before March 31, 2001.

The person must make a lump sum payment of ten dollars per month retroactively to the time the person first became eligible for membership, plus interest at eight percent for each year of retroactive payment. Any person taking advantage of this provision must make the payment no later than June 30, 2001.

These sections become effective October 1, 2000. (KCB)

Increase the Monthly Pension for Members of the Firemen's and Rescue Squad Workers' Pension Fund

S.L. 2000-67, Sec. 26.18 (HB 1840) increases the monthly benefit paid to retirees of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund from $146 to $151. To be eligible for the benefit, members must pay $10 per month for 20 years, be at least 55 years of age, and have obtained at least 20 years of service. The benefit is increased for those already retired and those who retire in the future. In addition, an identical increase is provided for members who become totally and permanently disabled in the line of duty.

This section became effective July 1, 2000. (KCB)

Include Full-Time County Fire Marshals in the Firemen's and Rescue Squad Workers' Pension Fund

S.L. 2000-67, Sec. 26.22 (HB 1840) amending G.S. 58-86-25, includes full-time county fire marshals in the Firemen's and Rescue Squad Workers' Pension Fund. The definition of "eligible firemen" is

amended to include a county employee whose sole duty is to act as fire marshal of the county, provided the board of county commissioners certifies the fire marshal's attendance at no less than 36 hours of all drills and meetings in each calendar year.

This section became effective July 1, 2000. (TM)

Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, and the Local Government Employees' Retirement System

Encourage Retired Teachers to Return to the Classroom

S.L. 2000-67, Secs. 8.24(a)-(b) (HB 1840) amending G.S. 135-3(8)c as amended by Section 28.24(a) of S.L. 1998-212, and G.S. 115C-325(a)(5a) as enacted by Section 28.24(c) of S.L. 1998-212, expands the opportunities of Teachers and State Employees Retirement System (TSERS) beneficiaries for reemployment in public schools. These provisions allow reemployment of a beneficiary who has been retired for at least 12 months and has not been employed in any capacity, except as a public school substitute teacher, for at least 12 months immediately preceding the effective date of reemployment. Post-retirement earnings of a beneficiary employed to teach on a substitute, interim, or permanent basis in a public school are excluded from the earnings limit. This section is effective until July 1, 2003.

These sections became effective July 1, 2000. (TM)

Enhance the Benefits Payable from the Teachers' and State Employees Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, and the Local Government Employees' Retirement System

S.L. 2000-67, Secs. 26.20(a)-(j) (HB 1840) enhance benefits payable from the four major public retirement systems.

With regard to the Teachers' and State Employees' Retirement System, these provisions increase the defined benefit formula accrual rate from 1.80% to 1.81%, provide a 3.6% post-retirement increase in the allowances for beneficiaries who retired on and before July 1, 1999, prorate the increase for beneficiaries who retired after July 1, 1999, but before June 30, 2000, and provide for a 0.6% increase to those who were retired as of June 1, 2000 to account for the increase in the accrual rate.

With regard to the Local Government Employees' Retirement System, these provisions increase the defined benefit formula accrual rate from 1.77% to 1.78%, provide a 3.8% post-retirement increase in the allowances for beneficiaries who retired on and before July 1, 1999, prorate the increase for those who retired after July 1, 1999, but before June 30, 2000, and provide for a 0.6% increase to those who were retired as of June 1, 2000 to account for the increase in the accrual rate.

With regard to the Legislative Retirement System, these provisions provide a 3.6% post-retirement increase in the allowances for beneficiaries who retired on or before January 1, 2000 payable effective July 1, 2000 and prorate the increase for those who retired after January 1, but before June 30, 2000.

With regard to the Consolidated Judicial Retirement System, these provisions provide a 2.6% post-retirement increase in the allowances for beneficiaries who retired on or before July 1, 1999 payable effective July 1, 2000 and prorate the increase for those who retired after July 1, 1999, but before June 30, 2000.

These sections became effective July 1, 2000. (KCB)

Licensing/Examining Board Retirement

S.L. 2000-187 (SB 1046) reopens the time within which certain licensing boards may elect to participate in the Teachers' and State Employees' Retirement System. Any State board or agency charged with administering any law relating to the examination and licensing of persons to practice a profession, trade, or occupation, and subject to the provisions of the Executive Budget Act has until October 1, 2000 to irrevocably elect to become an employer in the Teachers' and State Employees' Retirement System. Participation is conditioned on the board's payment of all of the employer's contributions and on collecting the employees' contributions.

This act became effective August 2, 2000. (TM)

Studies

Legislative Research Commission

Governmental and Personnel Issues

S.L. 2000-138, Secs. 2.1(1)a-b (SB 787) authorize the Legislative Research Commission to study the following Governmental and Personnel Issues:

- Salaries and benefits of Department of Correction employees.
- Receipt and use of federal funds under Title VI of the 1964 Civil Rights Act. (TM)

Referrals to Departments, Agencies, Etc.

Salary Adjustment Fund Study

S.L. 2000-67, Secs. 26.14(a)-(b) (HB 1840) require the Office of State Personnel to report to the Legislative Research Commission and the Joint Legislative Commission on Governmental Operations by December 1, 2000 on the adequacy of the Salary Adjustment Fund to fund position reallocations, salary range revisions, and in-range salary adjustments. (TM)

Referrals to Existing Commissions/Committees

The Employment Security Commission

S.L. 2000-67, Sec. 14.17 (HB 1840) requires the Employment Security Commission to study the ability of older and second career workers to secure employment in North Carolina. The Employment Security Commission shall report its findings, with recommendations and cost analysis, to the Chairs of the House Economic Growth and Community Development Committee, the Senate Pensions and Retirement and Aging Committee, the Legislative Research Commission on Employment Security, and the Aging Study Commission by April 1, 2001. (TM)

Joint Legislative Transportation Oversight Committee

S.L. 2000-138, Sec. 7.1 (SB 787) authorizes the Joint Legislative Transportation Oversight Committee to study the policy associated with retirement benefits for part-time DOT employees. The Committee must submit its report, if any, to the 2001 General Assembly upon its convening. (GSP)

Chapter 9
Environment and Natural Resources

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

Enacted Legislation
Air Quality

I/M Technology Amendments/CMAQ Funds

S.L. 2000-134 (HB 1638) provides for the use of on-board diagnostic (OBD) equipment in the motor vehicle emissions inspection and maintenance (I/M) program. This act also excludes federal congestion mitigation and air quality (CMAQ) funds from the distribution formula for funds expended on transportation construction projects.

Motor Vehicle Emissions Inspections: Background Information

Law prior to S.L. 1999-328 (SB 953): Motor vehicle safety inspections are required in all 100 counties in North Carolina. The safety inspection consists of an inspection of various types of motor vehicle equipment to determine if the motor vehicle has the required equipment and the equipment is in a safe operating condition. Motor vehicle emissions inspections are required in nine "emissions" counties (Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, and Wake). The emissions inspection consists of a visual inspection of a motor vehicle's exhaust system and emissions control devices and an analysis of the exhaust emissions of the motor vehicle while it idles (the "tailpipe" or "idle" test).

S.L. 1999-328 (HB 953) (Ambient Air Quality Improvement Act of 1999): The Ambient Air Quality Improvement Act of 1999 contained a number of provisions designed to improve air quality in the State, mainly focusing on measures related to the emissions of air pollutants from motor vehicles. It specifically provided that the I/M program would be enhanced by replacing the "tailpipe" test with a test that simulates acceleration while measuring emissions (ASM test). It also provided that the I/M program would be expanded beyond the nine emissions counties according to the schedule set out in the following table.

I/M PROGRAM EXPANSION SCHEDULE (Expansion Counties)	
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

The Ambient Air Quality Act of 1999 further provided that the I/M program would use the new ASM test and be expanded beyond the nine emissions counties only if the General Assembly increased the fee for a motor vehicle emissions inspection prior to January 1, 2001. This act directed the Department of Environment and Natural Resources (DENR) to consult with the Division of Motor Vehicles (DMV) and the affected parties to determine a reasonable fee for motor vehicle emissions inspections under the enhanced I/M program. DENR was directed to report its findings and recommendations to the Environmental Review Commission (ERC). The ERC was directed to recommend legislation to increase the fee for a motor vehicle emissions inspection to the 2000 Regular Session of the 1999 General Assembly.

DENR Proposal, ERC Recommendation, and House Bill 1638 (First Edition): The Secretary of DENR reported the results of DENR's study of the I/M fee issue and presented a proposal to the ERC. The DENR proposal would have required that motor vehicle emissions be analyzed using the on-board diagnostic (OBD) systems of 1996 and later models rather than the ASM test. In the nine emissions counties, the

"tailpipe" test would continue to be required for 1975 through 1995 model motor vehicles, while the OBD test would be required for 1996 and later model motor vehicles. In the expansion counties, the OBD test would be the only test required and would only apply to 1996 and later model motor vehicles. Under the DENR proposal, the fee for a combined safety and emissions inspection would increase from $19.40 to $23.75 on July 1, 2000 and to $25.90 on July 1, 2002. The ERC recommended the DENR proposal to the 2000 Session of the 1999 General Assembly and the proposal was introduced as House Bill 1638. While House Bill 1638 was significantly amended during the legislative process and the provisions that would have increased the safety and emissions inspection fees were not included, DENR's proposal to shift from the ASM test to the OBD test was retained and House Bill 1638 was ultimately enacted as S.L. 2000-134.

S.L. 2000-134 (HB 1638)

Effective July 1, 2002: Emissions inspections in the nine emissions counties will consist of a visual inspection of the motor vehicle's emissions control devices and, if the motor vehicle is a 1975 through 1995 model, a "tailpipe" test or, if the motor vehicle is a 1996 or later model, an OBD test.

Effective July 1, 2003: Emissions inspections in the nine emissions counties will remain the same. Emissions inspections in the expansion counties will consist of a visual inspection of the motor vehicle's emissions control devices and an OBD test for 1996 or later model motor vehicles. The emissions inspection requirement for expansion counties will only apply to those counties as they are phased into the I/M program according to the above table.

Effective July 1, 2006: Emissions inspections in the nine emissions counties and all of the expansion counties will consist of a visual inspection of the motor vehicle's emission control devices and an OBD test for 1996 or later model motor vehicles. The "tailpipe" test will no longer be required in any county.

Inspection fee: This act does not provide for an increased fee for a motor vehicle safety or emissions inspection. It directs the ERC to study issues related to the costs associated with the safety inspection and I/M program to determine a reasonable fee for inspections under the enhanced I/M program. The ERC is directed to recommend legislation to increase the inspection fees to the 2001 General Assembly. This act also repeals the provision of S.L. 1999-328 that would have repealed the enhanced and expanded I/M program established by S.L. 1999-328 if the General Assembly did not increase the fee for a motor vehicle emissions inspection prior to January 1, 2001.

This act also:

- Exempts farm vehicles from the I/M program. Effective July 1, 2000
- Exempts new motor vehicles (those that have been used for 12 months or less) from the I/M program. A motor vehicle for lease or rent is subject to the emissions inspection requirements when it has been offered for lease or rent for 12 months or more or it is sold to a consumer-purchaser. Effective July 1, 2002
- Provides that inspection stations in the nine emissions counties may provide "tailpipe" testing, OBD testing, or both. Effective July 1, 2002 through December 31, 2005
- Authorizes the Environmental Management Commission and the DMV to adopt temporary rules to implement this act. Effective July 14, 2000
- Makes technical and conforming changes.

Congestion Mitigation and Air Quality (CMAQ) Funds

S.L. 2000-134, Sec. 22(b) (HB 1638). Congestion mitigation and air quality (CMAQ) funds are federal funds appropriated to states for projects that reduce transportation-related emissions of air pollutants. North Carolina received approximately $18 million in CMAQ funds for the 1999-2000 fiscal year. Prior to July 1, 2000, CMAQ funds were distributed by the State according to the distribution formula set out in G.S. 136-17.2A. This is the distribution formula for the majority of the State's transportation construction funding. It is designed to promote equity in transportation funding based on population and geographic region rather than to address air quality concerns. Effective July 1, 2000, CMAQ funds will be excluded from this distribution formula and will instead be subject to distribution by the Board of Transportation. (JH)

Environmental Incentives

Renewable Energy Equipment Tax Credit

S.L. 2000-128 (HB 1473). See **Taxation**.

Brownfields Tax Incentives

S.L. 2000-158 (SB 1252). See **Taxation**.

Nonhazardous Dry-Cleaning Technology Incentives

S.L. 2000-160 (HB 1583). See **Taxation**.

Fisheries

Increase RCGL Gill Nets

S.L. 2000-139 (HB 1562) provides that two persons who each hold a Recreational Commercial Gear License (RCGL) and who are fishing from the same vessel may use up to a combined 200 yards of gill net, but that no more than 200 yards of gill net may be used regardless of the number of persons aboard the vessel who hold a RCGL. The prior law limited RCGL holders to 100 yards of gill net and did not allow two or more licensees on a single vessel to combine their nets.

This act directs the Joint Legislative Commission on Seafood and Aquaculture to study the appropriate amount of gill net that may be used under a RCGL and to report its findings and recommendations to the 2001 General Assembly. (See also **Studies**.)

This act became effective July 21, 2000. (JH)

SCFL Holders Take Crabs/CRC Temporary Rule

S.L. 2000-142 (SB 1272) changes the date on which the holder of a Standard Commercial Fishing License (SCFL) may take crabs from October 1, 2000 to August 2, 2000 (the date this act became effective). This act also directs the Marine Fisheries Commission (MFC) to increase the number of SCFLs in the pool of available licenses so that the Division of Marine Fisheries (DMF) may issue a SCFL to each holder of an interim crab license who applies between August 2, 2000 and October 1, 2000, and who otherwise qualifies for a SCFL under the MFC's eligibility criteria. Finally, this act authorizes the Coastal Resources Commission (CRC) to adopt temporary rules to establish exceptions to the 30-foot setback requirement for public trust and estuarine waters to allow construction of residences on small, previously platted lots that are located in intensively developed areas.

This act became effective August 2, 2000. (JH)

Land Use, Planning, And Conservation

Farmland Preservation

S.L. 2000-67, Sec. 12.1 (HB 1840). See **Agriculture**.

Establish Metropolitan Planning Boards

S.L. 2000-80 (HB 1288). See **Transportation**.

Extend Billboard Moratorium

S.L. 2000-101 (SB 1275). See **Transportation**.

Establish Rural Planning Organizations

S.L. 2000-123 (SB 1195). See **Transportation**.

Flood Hazard Prevention Act of 2000

S.L. 2000-150 (SB 1341) rewrites all of Part 6 (Floodway Regulation) of Article 21 of Chapter 143 of the General Statutes. This act changes the title of Part 6 to Floodplain Regulation, rewrites the purpose of the Part, and extensively amends the definitions of terms. It authorizes local governments to adopt flood hazard prevention ordinances to regulate uses in flood hazard areas. A local government that adopts a flood hazard prevention ordinance by July 1, 2001 will be given a higher priority to receive loans and grants from the Clean Water Revolving Loan and Grant Fund. This act also prohibits new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as authorized under a flood hazard prevention ordinance. Administration of the floodplain regulation program is transferred from the Department of Environment and Natural Resources (DENR) to the Department of Crime Control and Public Safety.

Flood Hazard Prevention Ordinance

This act authorizes local governments to adopt flood hazard prevention ordinances. A flood hazard prevention ordinance must:

- Meet the requirements of the National Flood Insurance Program.
- Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain.
- Require that chemical or fuel storage tanks incidental to an allowed use either be watertight or elevated above base flood elevation.

As part of its flood hazard prevention ordinance, a local government may establish a permitting process for uses of flood hazard areas. Certain uses including agriculture, mining, recreation and land application of waste and septage may be made of flood hazard areas without the issuance of a permit. Under its permitting program, a local government

- May consider the impact of locating an obstruction in a flood hazard area on existing and future development.
- Must consider the impact of locating an obstruction in a stream on water back up and diversion, the danger of the obstruction being swept downstream, and injury and damage at the site of the obstruction.

A local government may also include in its flood hazard prevention ordinance a procedure for granting a variance to the prohibition on new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain. Under a variance procedure, a local government must notify the Secretary of Crime Control and Public Safety at least 30 days prior to granting the variance and must find that:

- The use serves a critical need to the community.
- No feasible location exists outside the 100-year floodplain for the location of the use.
- The lowest floor of any structure is either elevated or watertight.
- The use complies with all other applicable laws and regulations.

If a city chooses not to exercise its authority to adopt a flood hazard prevention ordinance that applies to its extraterritorial zoning jurisdiction, the surrounding county is authorized to do so.

Other Provisions for Flood Hazard Prevention

This act provides for a number of other flood hazard prevention measures that:

- Authorize local governments to acquire an existing structure in a flood hazard area by purchase or condemnation if necessary to prevent damage from flooding.
- Authorize local governments to delineate flood hazard areas with the assistance of State and federal technical agencies. Flood hazard areas may be delineated by reference to maps prepared under the National Flood Insurance Program. The Department of Crime Control and Public Safety may prepare maps of the 100-year floodplain and base flood elevations if existing floodplain maps under the National Flood Insurance Program are more than five years old and the Department finds a need to identify flood hazard areas to prevent flood damage. Maps prepared by the Department must meet the federal standards for use in administering the National Flood Insurance Program.
- Amend an existing penalty provision to make a violation of floodplain regulations a misdemeanor only if the violation is willful and to allow a local government to use all remedies available for the enforcement of its zoning ordinance to enforce its flood hazard prevention ordinance.
- Provide local governments that adopt a flood hazard prevention ordinance conforming to the minimum requirements set out in this act priority in the consideration of applications for loans and grants from the Clean Water Revolving Loan and Grant Fund.
- Direct the Environmental Review Commission (ERC) to study the need to increase minimum elevation requirements for structures in floodplains, to increase the authority of the Secretary of Crime Control and Public Safety to enforce minimum standards in the floodplains, and other measures to prevent recurring damage to public and private property from flooding in order to reduce demands for public assistance in response to future storm events.
- Direct the Environmental Management Commission (EMC) to study the impact of development in the river basins of the State on the volume of stormwater runoff and its contribution to flood events. The EMC is directed to specifically consider means to reduce the impact of development in the river basins of the State.

The provision on priority for loans and grants from the Clean Water Revolving Loan and Grant Fund becomes effective July 1, 2001 and applies to loans and grants made on or after that date. All other provisions of this act became effective August 2, 2000. (JH)

Parks & Public Spaces

Bullhead Mountain State Natural Area

S.L. 2000-17 (HB 1577) authorizes the addition of Bullhead Mountain State Natural Area to the State Parks System. Bullhead Mountain is located in Allegheny County adjacent to the Blue Ridge Parkway between mileposts 232 and 235. The Bullhead Mountain State Natural Area is projected to include 320 acres of Bullhead Mountain. The Natural Area will be supervised by staff from nearby Stone Mountain State Park and managed by the North Carolina Office of the National Audubon Society pursuant to a lease agreement with the Department of Environment and Natural Resources.

This act became effective June 22, 2000. (RZ)

Million Acre Open Space Goal

S.L. 2000-23 (SB 1328) establishes a State goal of permanently protecting an additional one million acres of farmland, open space, and conservation lands by December 31, 2009. These lands are to be protected by acquisition in fee simple or by acquisition of perpetual conservation easements by public

conservation organizations or private entities. This act directs the Secretary of Environment and Natural Resources to lead the effort to add one million acres to the State's protected lands and to plan and coordinate this effort with other agencies and entities. This act also directs the Secretary to report to the Governor and the Environmental Review Commission (ERC) annually beginning on September 1, 2000 on the State's progress towards attaining the million acre protection goal.

This act became effective June 28, 2000. (RZ)

Lea Island State Natural Area/Reallocation of State Land

S.L. 2000-102 (HB 1617) authorizes the addition of Lea Island State Natural Area to the State Parks System. Lea Island is an approximately 200 acre undeveloped barrier island located between Topsail Beach and Figure Eight Island in Pender County. The Natural Area will be managed by the North Carolina Office of the National Audubon Society pursuant to a lease agreement with the Department of Environment and Natural Resources (DENR).

This act also directs the Department of Administration to transfer approximately 150 acres in Burke County to Western Piedmont Community College for an agricultural campus. Western Piedmont Community College may make up to 12 acres of that land available to Burke County for the purpose of building the Burke County Agriculture Extension Complex.

In addition, this act reallocates land in west Raleigh formerly used for the Polk Youth Institution to the Department of Cultural Resources for the North Carolina Museum of Art.

This act became effective July 11, 2000. (RZ)

Finance New Wildlife Centers

S.L. 2000-143 (SB 1477). See **Taxation**.

Mountains to Sea State Park Trail

S.L. 2000-157 (SB 1272) authorizes the addition of the Mountains to Sea State Park Trail to the State Parks System. The trail as envisioned would traverse the State from the Great Smoky Mountains National Park to the Cape Hatteras National Seashore. If it is necessary to acquire land for the Mountains to Sea State Park Trail by condemnation, the Department of Administration (DOA) must notify the board of commissioners of the county in which the land is located and, if the land is located in a municipality, the city council members of the municipality at least five days before initiating condemnation proceedings. The DOA shall not initiate condemnation proceedings to acquire land if a governing body of a county or municipality notifies the DOA within five business days that it objects to the proceedings.

This act also authorizes the DOA to acquire and allocate to the Department of Environment and Natural Resources (DENR) for management by the Division of Parks and Recreation conservation lands that are not included in the State Parks System and that may be traded or transferred to protect, develop, and manage the Mountains to Sea State Park Trail, other State Parks, or other conservation lands.

This act became effective August 2, 2000. (RZ)

Solid Waste

Removal of Abandoned Vessels

S.L. 2000-74 (HB 1625) establishes a pilot program for the removal of abandoned vessels in the Neuse River Basin. Under the pilot program, the Department of Environment and Natural Resources (DENR) is authorized to remove vessels that have been left unattended or substantially dismantled for more than 90 days in coastal fishing waters or upon submerged lands. Prior to removal, DENR must attempt to notify the owner of the vessel that the vessel has been determined to be abandoned and give

the owner 45 days within which to remove the abandoned vessel and restore the affected area. If the owner does not remove the vessel within 45 days, DENR may remove the vessel, restore the affected area, and institute an action in Superior Court to recover the costs of removal and restoration from the owner. DENR may also sell an abandoned vessel and apply the net proceeds to the costs of removal and restoration.

DENR is directed to report on the pilot program to the Environmental Review Commission no later than January 1, 2002 and January 1, 2003. The pilot program is effective July 1, 2000 and expires January 1, 2003. DENR may continue an action to recover costs for the removal of an abandoned vessel after the expiration of the pilot program.

This act became effective July 1, 2000. (JH)

White Goods Sunset Repeal

S.L. 2000-109, Sec. 9(a) (HB 1854). See **Taxation** and also the **Studies** section of this chapter.

Special Registration Plate (Litter Prevention)

S.L. 2000-159 (SB 1210). See **Transportation** and also the **Studies** section of this chapter.

Water Quality

Dry-Cleaning Solvent Cleanup Amendments

S.L. 2000-19 (HB 1326) makes several changes to the Dry-Cleaning Solvent Cleanup Act of 1997 (1997 Act) and amends and enacts tax provisions relating to the Dry-Cleaning Solvent Cleanup Program. The primary purpose of these changes is to more effectively fund the cleanup of sites that are contaminated by dry-cleaning solvents.

The 1997 Act

The 1997 Act employs a financial responsibility requirement and the Dry-Cleaning Solvent Cleanup Fund (Fund) as two monetary tools that assist parties in cleaning up contaminated dry-cleaning facilities. The financial responsibility requirement is satisfied by establishing and maintaining financial responsibility for legal liability for dry-cleaning solvent contamination at the facility by either:

- Obtaining pollution and remediation legal liability insurance for the facility with coverage limits not less than $1,000,000; or
- Depositing securities or an acceptable third-party bond in an amount not less than $1,000,000.

As explained below, the Fund turned out to be the sole source of financial assistance available for cleaning up contaminated dry-cleaning facilities. Eligibility for reimbursement from the Fund is contingent on the owner of the dry-cleaning facility having satisfied the 1997 Act's financial responsibility requirement. At the time that the 1997 Act was considered, it was thought that all dry-cleaners would be able to obtain the type of insurance described above and that this insurance would provide funds to assist in the cleanup of contaminated dry-cleaning facilities. The type of insurance that the 1997 Act requires was available at the time the 1997 Act was enacted, but by 1998, the insurance was no longer available.

Under the 1997 Act, the major source of revenue for the Fund is a tax on dry-cleaning solvent. The solvent tax is a per gallon privilege tax equal to $5.85 per gallon of chorine-based solvents and $0.80 per gallon of hydrocarbon-based solvents. The Fund has received roughly $870,000 per year from the dry-cleaning solvent tax. After an owner of a dry-cleaning facility meets the applicable deductibles, the Fund may be used to reimburse the owner for the costs of cleaning up the facility. Due to the limited revenues available to the Fund and the fact that the Fund is also the source of funding for the administration of the Dry-Cleaning Solvent Cleanup Program, no funds have been disbursed for cleaning up contaminated dry-cleaning facilities.

The Dry-Cleaning Solvent Cleanup Amendments

The Dry-Cleaning Solvent Cleanup Amendments require the Secretary of Revenue to make quarterly transfers of the State sales and use taxes collected from dry-cleaning and laundry businesses to the Fund. The amount transferred each quarter will equal 15% of the net State sales and use taxes collected from these businesses in the previous fiscal year. The transfer becomes effective April 1, 2003, and expires June 30, 2010.

This act also increases the rate of the tax imposed on dry-cleaning solvent as follows:

- From $5.85 to $10 per gallon of dry-cleaning solvent that is chlorine-based.
- From $0.80 to $1.35 per gallon of dry-cleaning solvent that is hydrocarbon-based.

The increase becomes effective October 1, 2001 and expires January 1, 2010.

This act clarifies that the sales tax procedure is the same for the sale of services as it is for the sale of tangible personal property. In addition, this act adds the following copayment obligations to the existing deductibles that an owner of a dry-cleaning facility must pay to access the Fund. New co-payment obligations became effective retroactively to April 1, 1998. The new copayments are as follows:

Type of Facility	Deductible	Co-pay
Fewer then five employees	$5,000	1% of the costs between $200,000 and $1,000,000
At least five but fewer than ten employees	$10,000	2% of the costs between $200,000 and $500,000 and 1% between $500,000 and $1,000,000
Ten or more employees	$15,000	3% of the costs between $200,000 and $500,000 and 1% between $500,000 and $1,000,000
Wholesale Distribution Facility	$25,000	3% of the costs between $200,000 and $500,000 and 1% between $500,000 and $1,000,000

The 1997 Act is further amended by:

- Repealing the requirement of financial responsibility for dry-cleaning facilities. This provision became effective retroactively to April 1, 1998.
- Allowing the Dry-Cleaning Program to be a "State lead" program. This allows the Environmental Management Commission (EMC), and, by delegation, the Department of Environment and Natural Resources (DENR), to enter into contracts with environmental consultants for the cleanup of contaminated dry-cleaning facilities. Currently, an owner of a dry-cleaning facility contracts with an environmental consultant to do the cleanup work and seeks reimbursement from the Fund.
- Providing that, of the revenue credited to the Fund, DENR and the Attorney General's Office may use up to 40% in FY 2001 and up to 45% in FY 2002 for the administration of the program. Prior to FY 2001, in FY 2003, and thereafter, DENR and the Attorney General's Office may use up to 20% of the revenue credited to the Fund for the administration of the program.
- Directing the Secretary of DENR, with the assistance of a balanced working group of stakeholders, to study alternative dry-cleaning processes and equipment. The Secretary is required to submit an interim report no later than November 1, 2000, and a final report no later than September 1, 2001.

Except as otherwise provided, this act became effective June 26, 2000. (RZ)

No Land-Use Restrictions for Certain Petroleum Discharges

S.L. 2000-51 (SB 1279) exempts sites contaminated by leaking petroleum underground storage tanks (USTs) and remediated to "risk-based" rather than "pristine" standards from the land-use restrictions and deed recordation requirements imposed by SL 1999-198 (SB 1159). The exemption applies retroactively to October 1, 1999 and expires September 1, 2001. This act also directs the Environmental Review Commission to continue studying issues related to the application of land-use restrictions to UST sites that are remediated to risk-based standards and to report its findings, recommendations, and any legislative proposals to the 2001 General Assembly. (See also **Studies**.)

Except as otherwise provided, this act became effective June 30, 2000. (HH, JH)

Petroleum Discharges/De Minimis Reports

S.L. 2000-54 (HB 1618) amends the statutes governing oil pollution and hazardous substances control to exempt any release of petroleum to the environment from the otherwise applicable requirement that a release of petroleum in any quantity, however small, must be immediately reported to the Department of Environment and Natural Resources. A release need not be reported if it meets all of the following conditions:

- The release is less than 25 gallons.
- The release is cleaned up in less than 24 hours.
- The release does not cause a sheen on nearby surface water.
- The release does not occur within 100 feet of surface waters.

This act became effective June 30, 2000 and applies to petroleum releases that occur on or after that date. (HH, JH)

Amend Clean Water Management Trust Fund

S.L. 2000-67, Secs. 7.7(a)-(g) (HB 1840) provide that beginning with the 2001-2002 fiscal year the Clean Water Management Trust Fund will no longer be funded from the unreserved credit balance remaining in the General Fund at the end of each fiscal year. Instead, the Clean Water Management Trust Fund will receive direct appropriations as follows:

Fiscal Year	Appropriation
Fiscal year 2001-2002	Forty million dollars ($40,000,000)
Fiscal year 2002-2003	Seventy million dollars ($70,000,000)
Fiscal year 2003-2004 and subsequent fiscal years	One hundred million dollars ($100,000,000)

The conforming statutory amendments necessary to implement these provisions become effective June 30, 2001. (JH)

Stormwater Management Programs

S.L. 2000-70 (HB 1602) addresses the North Carolina Supreme Court's interpretation of legislation enacted by the General Assembly concerning the authority of counties and municipalities to operate stormwater systems as public enterprises and charge fees for the services provided by these stormwater systems.

Background Information The federal Clean Water Act requires an operator of a municipal storm sewer system serving 100,000 people or more to develop a stormwater management program. In the near future, federal law will also require operators of smaller municipal storm sewer systems to develop stormwater management programs. The North Carolina General Assembly responded to these federal requirements by enacting legislation (S.L. 1989-643 and S.L. 1991-591) designed to allow counties, municipalities, and water and sewer authorities to establish and operate stormwater systems as public enterprises and charge fees for the services provided by these stormwater systems. In Smith Chapel Baptist Church v. City of Durham, 350 NC 805 (1999) the North Carolina Supreme Court interpreted the 1989 legislation. The court found that the definition of public enterprise as it pertained to stormwater systems was a grant of authority limited to the physical infrastructure necessary for managing stormwater. The court concluded that the City of Durham could not operate its entire stormwater management program as a public enterprise. Thus, the city could charge fees only in the amount needed to fund the

construction, maintenance, and operation of the physical infrastructure of the stormwater system and could not charge fees to administer the other components of the stormwater management program.

This act amends the definition of "public enterprise" in the county and municipal statutes to explicitly include stormwater management programs. In addition, this act makes conforming changes to the statutes that allow counties and municipalities to charge fees for the services provided by public enterprises.

This act also authorizes water and sewer authorities to establish and operate stormwater management programs and to charge fees for the services provided by these programs. Finally, this act allows these authorities to adopt ordinances concerning stormwater management programs.

The provisions of this act that apply to counties and municipalities are effective retroactively to July 15, 1989. The provisions of this act that apply to the water and sewer authority statutes are effective retroactively to July 8, 1991. (RZ)

Reallocate Water Bond Funds

S.L. 2000-156 (SB 1381). See **Taxation**.

Miscellaneous

One Stop Permit Assistance Pilot Projects

S.L. 2000-67, Secs. 13.7(a)-(f) (HB 1840) direct the Department of Environment and Natural Resources (DENR) to establish a one year pilot project for permit application assistance and tracking in at least two regional offices. The pilot project is to be expanded statewide as soon as possible after the 2000-2001 fiscal year.

Under the pilot project, DENR must provide each person who submits a complete application for a permit with a time frame within which the applicant may expect a final decision regarding the issuance or denial of the permit. Unless otherwise provided by law, when an applicant has provided DENR with all required information and documentation and DENR fails to issue or deny the permit within 60 days of the projected date for a final decision, the permit shall be automatically issued. The permit will not automatically issue if the applicant substantially amends an application or agrees to receive a final decision at a later date. DENR may adopt temporary rules to implement and expand the pilot project.

DENR shall track the time required to process all environmental permit applications received on or after July 1, 2000, as part of the pilot project. DENR shall report the results of the pilot project to the Appropriations Subcommittees on Natural and Economic Resources of the House of Representatives and the Senate, the Fiscal Research Division, and the Environmental Review Commission by April 1, 2001.

These provisions became effective July 1, 2000. (JH)

Additional Notice of Mining Permit Applications

S.L. 2000-116 (SB 1329) amends the Mining Act of 1971 to require additional notice of an application for a mining permit or an application to modify a mining permit to add new land to the permitted area. The Mining Act requires that notice of an application for a mining permit inform recipients of the opportunity to submit written comments and to request a public hearing on the proposed mining operation. Prior to the enactment of S.L. 2000-116, a permit applicant was required to notify only the chief administrative officer of the county or municipality in which the mining operation is located and owners of record of land adjoining the "permit boundaries". "Permit boundaries" was defined only by rule and in essence meant the outer limits of the area in which mining related activities occur. In making application for a mining permit, an applicant is able to specify proposed permit boundaries. In some instances an applicant could specify permit boundaries that are wholly within the boundaries of land owned or controlled

by that applicant. In those instances the only notice to nearby landowners that an applicant would be required to give was to the applicant him, her, or itself.

To address this situation, S.L. 2000-116 defines the terms "permitted area", "permit boundaries", and "land adjoining". "Permitted area" is defined to include "affected land", buffers, reserves, and any other land delineated in a mining permit. (The term "affected land" is defined in G.S. 74-49 and means land that is mined; associated land that is exposed to erosion; land on which overburden or waste is deposited; and land used for processing, treatment, stockpiles, nonpublic roads, or settling ponds.) "Permit boundaries" means the boundaries of a permitted area. "Land adjoining" means any parcel of land that:

- Adjoins land owned or controlled by a holder of a mining permit or an applicant for a mining permit, or any of their affiliates;
- Is contiguous to the parcel where any proposed mining activity would take place; and
- Is not owned or controlled by a holder of a mining permit, an applicant for a mining permit, or any of their affiliates.

Using these definitions, this act requires an applicant for a new mining permit or a permit modification that would add land to the permitted area to notify all of the following and inform them of their right to comment or call for a public hearing on the application:

- The chief administrative officer of each county and municipality that includes the mining site.
- The owners of land adjoining that lies within 1,000 feet of the mining site.
- The owners of land that lies directly across a non-interstate highway of four lanes or less, a watercourse, or any other public right-of-way and that lies within 1000 feet of the mining site.

This act also requires the Department of Environment and Natural Resources to notify various agencies responsible for the management of environmental, natural, and cultural resources of any application for a new mining permit or for a modification of a mining permit to add land to the permitted area and request that those agencies comment on the application within 30 days.

This act becomes effective October 1, 2000. (GG, HH, JH)

Urban Waterfront Redevelopment

S.L. 2000-140, Sec. 92.1(a) (SB 1335). This section amends G.S. 113A-120.2 governing the issuance of permits for urban waterfront redevelopment that would otherwise be prohibited under the Coastal Area Management Act (CAMA) to provide that a structure constructed over coastal wetlands, estuarine waters, or public trust areas before July 1, 2000, may be used to serve to the public food and drink that is prepared at a restaurant that began operation on or before July 1, 2000. G.S. 113A-20.2, as amended by S.L. 2000-172 (HB 1218) expires April 1, 2001. S.L. 2000-140, Sec. 92.1(b) (SB 1335) rewrites S.L. 2000-172, Sec. 2.2 (HB 1218) to direct the Coastal Resources Commission (CRC) to adopt a temporary rule to establish use standards for waterfront development in urban areas to replace G.S. 113A-120.2 when that statute expires on April 1, 2001. The temporary rule is to become effective April 1, 2001 and will remain in effect until it is replaced by a permanent rule.

These provisions became effective July 13, 2000. (GG)

Amend Environmental Laws

S.L. 2000-172 (HB 1218) amends various environmental laws as follows:

Use of Sub-meters in Consecutive Water Systems provides that an entity that is authorized by the Utilities Commission to install sub-meters and resell water purchased from a public water system to persons who occupy the same contiguous premises shall be regulated as a consecutive water system, not as a public water system.

Urban Waterfront Redevelopment delays by nine months to April 1, 2001, the expiration of G.S. 113A-120.2, which directs the Coastal Resources Commission (CRC) to permit urban waterfront development that would otherwise be prohibited under the Coastal Area Management Act (CAMA) if the development is on a historically urban site, is sponsored by the local government having jurisdiction over

the site, and is not expected to have significant adverse effects on the environment. Note that G.S. 113A-120.2 was amended by S.L. 2000-140, Sec. 92.1(a) (SB 1335). A description of S.L. 2000-140, Sec. 92.1(a) is in the previous summary of this Chapter. This provision also directs the CRC to adopt a temporary rule to govern urban waterfront redevelopment in historically urban areas. However, this provision was rewritten by S.L. 2000-140, Sec. 92.1(b) (SB 1335), a description of which appears in the previous summary of this Chapter.

Dredge and Fill Variances directs the CRC to coordinate the granting of variances under the dredge and fill program with the granting of variances for development in primary nursery areas and outstanding resource waters. This clarifies that variances may be granted under the dredge and fill program. This part became effective August 2, 2000.

Clarify Environmental Management Commission Appointments clarifies that the Governor may reappoint a member of the Environmental Management Commission (EMC) upon the expiration of that person's term, provided the person still qualifies to be a member of the EMC. This part became effective August 2, 2000 and applies retroactively to all appointments of the Governor to the EMC.

Consultation with Riparian Buffer Stakeholders requires that prior to drafting a temporary or permanent rule that would require the preservation of riparian buffers, the Department of Environment and Natural Resources (DENR) must consult with interested stakeholders to ensure that they have an opportunity to inform DENR of their concerns before any proposed rules are drafted. This part became effective August 2, 2000.

Fisheries Permit Fees repeals a provision of G.S. 113-169.1 governing the issuance of permits for gear, equipment, and other specialized activities that directs the Marine Fisheries Commission (MFC) to establish fees to cover administrative costs for permits for gear, equipment, and specialized activities. This part also abolishes any existing fee established by the MFC. This part is effective retroactively to July 1, 2000.

Technical Corrections updates a cross-reference in G.S. 143-215.94E(i), which relates to civil penalties under the petroleum underground storage tank cleanup program. This part became effective August 2, 2000. (GG, HH, JH)

Studies

Legislative Research Commission

Study Water Supply Issues

S.L. 2000-138, Sec. 2.1(6)b (SB 787) authorizes the Legislative Research Commission (LRC) to study water supply issues, including the source and supply of groundwater and surface waters, pollution of groundwater and surface waters, progress toward controlling pollution of groundwater and surface waters, interbasin transfer of water, technology available for use in related areas, statewide public and private use of water, and water capacity use area issues. The LRC may report its findings and recommended legislation to the 2001 General Assembly. (RZ)

Study Issues related to the Prevention and Removal of Litter

S.L. 2000-159, Sec. 9(d) (SB 1210) directs the Legislative Research Commission to study issues related to the prevention and removal of litter. The Commission shall make a final report of its recommendations regarding the prevention and removal of litter, including any proposed legislation, to the 2001 General Assembly. (JH)

Referrals to Existing Commissions/Committees
Environmental Review Commission

Study Application Of Land-Use Restrictions To Leaking Petroleum Underground Storage Tank Cleanups

S.L. 2000-51, Sec. 3 (SB 1279) directs the Environmental Review Commission (ERC) to continue studying issues related to the application of land-use restrictions to leaking underground storage tank cleanups (UST sites) that are remediated to risk-based standards. The ERC shall report its findings and recommendations, including any legislative proposals, to the 2001 General Assembly. (HH, JH)

Study Recodification of Environmental Statutes

S.L. 2000-67, Sec. 13.4 (HB 1840) directs the Environmental Review Commission to study the recodification of the General Statutes relating to the environment and environmental agencies. (RZ)

Study and Recommend Fee for Motor Vehicle Emissions Inspection

S.L. 2000-134, Sec. 23 (HB 1638) directs the Environmental Review Commission (ERC), with the assistance of the Department of Environment and Natural Resources, the Division of Motor Vehicles, affected parties, and the Fiscal Research Division, to study issues related to the costs associated with the safety inspection and emissions inspection and maintenance (I/M) program to determine a reasonable fee for an inspection under the enhanced I/M program. The ERC may also evaluate strategies to ensure an efficient and orderly implementation of the enhanced I/M program. The ERC is directed to recommend legislation to increase the inspection fee to the 2001 General Assembly. (JH)

Review Report of the Estuarine Shoreline Protection Stakeholders Team

S.L. 2000-138, Sec. 11.1 (SB 787) authorizes the Environmental Review Commission (ERC) to review the findings and recommendations of the August 1999 report of the Estuarine Shoreline Protection Stakeholders Team of the Coastal Resources Commission (CRC). The ERC may determine which of the recommendations of the Stakeholders Team can be implemented administratively, which recommendations would require rule making by the CRC or other agency, and which recommendations would require legislation. The ERC may evaluate existing local government land-use planning in the coastal and inland counties that are included in the river basins that drain to coastal North Carolina. The ERC may specifically evaluate whether the local land-use planning process required for coastal counties under the Coastal Area Management Act of 1974 should be extended to include inland counties that are included in the river basins that drain to coastal North Carolina. Upon request of the ERC, the Department of Environment and Natural Resources, the CRC, and the Stakeholders Team shall assist the ERC in conducting this study. The ERC may refer consideration of any issue raised by this study to the Commission to Address Smart Growth, Growth Management, and Development Issues. The ERC shall report its findings and recommendations, including legislative proposals, if any, to the 2001 General Assembly. (RZ)

Study Flood Hazard Prevention Measures

S.L. 2000-150, Sec. 3 (SB 1341) directs the Environmental Review Commission (ERC) to study:

- Minimum elevation requirements for structures that are located in floodplains.

- The authority of the Secretary of Crime Control and Public Safety to enforce floodplain regulations.
- Protection against the potential recurrence of damage to public and private property that resulted from the hurricanes of 1999 in order to reduce the likelihood that public assistance will be needed in response to future hurricanes and other storm events.

The ERC is directed to report its findings and recommendations, including any proposed legislation, to the 2001 General Assembly. (JH)

House and Senate Appropriations Subcommittees on Natural and Economic Resources

Study Water Capacity Use Area Issues

S.L. 2000-67, Sec. 13.10 (HB 1840) directs the Appropriations Subcommittees on Natural and Economic Resources of the House of Representatives and the Senate to study the proposed rules that provide for the delineation of a water capacity use area in the counties of Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne, and Wilson. The Appropriations Subcommittees shall consider the economic impact that the proposed rules would have on the 15 county area and shall also consider what alternate water sources may be available to the 15 county area. The Appropriations Subcommittees may obtain assistance from any resources outside the General Assembly that the Subcommittees determine are needed to adequately perform their study. The Subcommittees shall report their findings and recommendations, including any legislative proposals, to the 2001 General Assembly. (RZ)

Study Organization of DENR

S.L. 2000-138, Sec. 9.1 (SB 787) authorizes the Appropriations Subcommittees on Natural and Economic Resources of the House of Representatives and the Senate to study the organization of the Department of Environment and Natural Resources (DENR) to determine its effectiveness and efficiency and to report any recommendations, including any legislative proposals, to the 2001 General Assembly no later than May 1, 2001. The Appropriations Subcommittees may obtain assistance from any resources outside the General Assembly that the Subcommittees determine are needed to adequately perform their study. (RZ)

Joint Legislative Commission on Seafood and Aquaculture

Study Amount of Gill Net Authorized Under Recreational Commercial Gear License (RCGL)

S.L. 2000-139, Sec. 2 (HB 1562) directs the Joint Legislative Commission on Seafood and Aquaculture to study the appropriate amount of gill net that should be authorized for use under a Recreational Commercial Gear License and to report its findings and recommendations to the 2001 General Assembly. (JH)

Referrals to Departments, Agencies, Etc.

Department of Environment and Natural Resources

Study Alternative Dry-Cleaning Processes and Equipment

S.L. 2000-19, Sec. 21 (HB 1326) directs the Secretary of Environment and Natural Resources, with the assistance of a balanced working group of stakeholders, to study alternative dry-cleaning processes and equipment. The Secretary is required to submit an interim report to the Environmental Review Commission no later than November 1, 2000, and a final report no later than September 1, 2001. (RZ)

Study Organization of DENR

S.L. 2000-67, Sec. 13.2 (HB 1840) directs the Department of Environment and Natural Resources (DENR) to continue to evaluate its organization to identify ways to increase efficiency and to retain staff and to identify ways to better serve the public through permit reform and organizational excellence. DENR shall report any recommendations to the Appropriations Subcommittees on Natural and Economic Resources of the House of Representatives and the Senate and to the Environmental Review Commission no later than January 15, 2001. (RZ)

Study the Relocation of Division of Coastal Management Office

S.L. 2000-67, Sec. 13.3 (HB 1840) directs the Department of Environment and Natural Resources (DENR) to study the feasibility of relocating the main office of the Division of Coastal Management to one or more of the 20 coastal counties within the jurisdiction of the Coastal Area Management Act. In its study, DENR shall consider the cost of relocation, the impact on program efficiency, the availability of office space, and other factors affecting program functions. If DENR determines that relocation of the main office is feasible, then it shall include in its report a draft plan for the relocation. DENR shall report its findings and recommendations to the Appropriations Subcommittees on Natural and Economic Resources of the House of Representatives and the Senate and to the Fiscal Research Division no later than January 15, 2001. (RZ)

Develop Beach Management and Restoration Plan / Identify Funds

S.L. 2000-67, Secs. 13.9(a)-(f) (HB 1840) direct the Department of Environment and Natural Resources (DENR) to compile and evaluate information on conditions and erosion rates of beaches, on coastal geology, and on storm and erosion hazards and to develop a multiyear State plan and strategy for beach management and restoration. These provisions also direct DENR to provide to the General Assembly, no later than May 1, 2001, a report on alternative State and local government sources of funding for beach nourishment. (JH)

Study Issues Related to the Scrap Tire and White Goods Disposal Tax

S.L. 2000-109, Sec. 9(b) (HB 1854) directs the Department of Environment and Natural Resources (DENR) to study issues related to the scrap tire disposal tax and the white goods disposal tax. The study will include an evaluation of whether the amount of the scrap tire disposal tax and the white goods disposal tax should be altered and whether the distribution of the proceeds of these taxes should be reapportioned. DENR shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than October 1, 2000. (JH)

Environmental Management Commission

Study Impact of Development on Frequency and Intensity of Flood Events

S.L. 2000-150, Sec. 4 (SB 1341) directs the Environmental Management Commission (EMC) to study the impacts of development on the volume and intensity of stormwater flow and on the resulting intensity, frequency, and duration of flood events. The EMC will specifically consider means to reduce or eliminate present and future impacts of development. The EMC will report its findings and recommendations, including any proposed legislation, to the Environmental Review Commission no later than February 15, 2001. (JH)

Chapter 10
Health and Human Services

Erika Churchill (EC), Frank Folger (FF), John Young (JY)

Enacted Legislation
Health

Retired Physician Licensure

S.L. 2000-5 (HB 1153) authorizes the North Carolina Medical Board to issue Limited Volunteer Licenses to retired physicians who have allowed their medical licenses to become inactive. There is no charge for a Limited Volunteer license when practicing medicine only at clinics that specialize in the treatment of indigent patients. The holder of a Limited Volunteer License must comply with continuing medical education requirements.

This act became effective June 6, 2000. (EC)

Health Care Registry Reports

S.L. 2000-55 (SB 1179) amends the North Carolina Health Care Personnel Registry statutes to require all health care facilities to notify the Department of Health and Human Services (DHHS) of all allegations against health care personnel related to abuse, neglect, misappropriation of property, fraud, or diversion of drugs. Current law requires notification only after the facility has conducted an investigation and the allegation substantiated. This act requires facilities to have evidence that an investigation was conducted and to make every effort to protect residents from harm while the investigation is in progress. Facilities must report the results of all investigations to DHHS within five working days of the initial notification. DHHS is authorized to suspend, cancel, or amend a license when a facility substantially fails to comply with the Registry reporting requirements.

This act also imposes administrative penalties on licensed mental health/developmental disabilities/substance abuse facilities for certain violations and authorizes the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules to implement these provisions.

The provisions of this act amending the Health Care Registry become effective October 1, 2000. The administrative penalty provisions of this act became effective June 30, 2000. (JY)

State Health Standards

S.L. 2000-67, Sec. 11 (HB 1840) requires the Secretary of the Department of Health and Human Services (Secretary) to adopt measurable standards for community health against which the State's actions to improve the health status of its citizens will be measured. The Secretary is required to report annually to the General Assembly and to the Governor on the following:

- Comparison of State health measurements to national health measurements and established State goals for each standard.
- Steps taken by State and non-State entities to meet the established goals.
- Steps planned to achieve established goals.

This section became effective July 1, 2000. (JY)

Medicaid Program

S.L. 2000-67, Sec. 11.5 (HB 1840) amends Secs. 11.12(a)-(aa) of S.L. 1999-237 (HB 168), which amended the schedule of services and reimbursement bases for the Medicaid program, as follows:

- Adds Nurse Practitioners to those who may be reimbursed by Medicaid for services rendered.
- Specifies that public ambulance providers will be reimbursed at cost.
- Specifies that the Department of Health and Human Services (DHHS) may adopt temporary rules to further define qualifications of providers and referral procedures for children eligible for Early and Periodic Screening Diagnosis and Treatment (EPSDT) services, in addition to listing providers who may be reimbursed by Medicaid directly.
- Adds "mental health services subject to independent utilization review" to the list of services that are exempt from the 24 visit limit per recipient per year.
- Allows DHHS to proceed with planning and development on the Program of All-Inclusive Care for the Elderly. DHHS is to issue a progress report to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources by January 30, 2001.
- Requires DHHS to amend the Medicaid State Plan to adopt simplified methodologies for the asset treatment in determining Medicaid eligibility for aged, blind, and disabled persons; the simplified methodologies are limited to excluding the value of burial plots and cash value of life insurance when the total face value of cash value bearing life insurance policies does not exceed $10,000.
- Requires the Fiscal Research Division, through the Legislative Services Offices, to issue a Request for Proposal for an independent consultant to study and review the amount, sufficiency, duration and scope of each service provided under the Medicaid Program. An interim report of such study is due January 1, 2001 and the final report is due May 1, 2001.
- Expands mental health services available to children eligible for EPSDT service to include:
  - Non-agency based services provided by licensed or certified psychologists, certified mental health nurse practitioners and licensed clinical social workers.
  - Institutional providers of residential treatment services, and psychiatric residential treatment facility services. These additional service providers must meet certain federal and State requirements and qualifications as defined by DHHS. DHHS is authorized to adopt temporary rules to define the provider qualifications and referral procedures.

This section became effective July 1, 2000. (EC)

Waive NC Health Choice Waiting Period for Special Needs Children

S.L. 2000-67, Secs. 11.8(a)-(b) (HB 1840) allow the Department of Health and Human Services (DHHS) to waive the 60-day waiting period requirement for a "special needs child" to qualify for benefits under the Health Insurance Program for Children (NC Health Choice) when health insurance benefits available to the family of a "special needs child" are terminated due to a long-term disability or substantial reduction in or limitation of lifetime medical benefits or benefit category.

Section 11.8(b) prohibits DHHS from spending more on the Health Insurance Program for Children than the amount appropriated to match federal funds for that year.

These sections became effective July 1, 2000. (FF)

Funds for Training Program for Recruitment of Certified Nursing Assistants in Nursing Facilities

S.L. 2000-67, Secs. 11.11A(a)-(c) (HB 1840). See **Senior Citizens**.

Child Residential Treatment Services Program

S.L. 2000-67, Secs. 11.19(a)-(d) (HB 1840). See **Children and Families.**

Services to Multiply-Diagnosed Adults

S.L. 2000-67, Secs. 11.22(a)-(c) (HB 1840) modify the delivery of services to multiply-diagnosed adults to require utilization review, elimination of certain administration and infrastructure, accountability, and implementation of cost-reduction strategies. To accomplish the cost reduction goals, while ensuring appropriate service delivery, Section 11.22(a) requires the Division of Mental Health, Development Disabilities, and Substance Abuse Services to:

- Only provide medically necessary treatment.
- Implement utilization review.
- Immediately eliminate Thomas S. Program administration, infrastructure, and categorical funding at the local level while continuing to serve these and other clients, and account for resulting savings.
- Provide services, with emphasis on cost-effectiveness and with input from consumers and families, that are results-oriented and deliverable as close to the consumer's home as possible.
- Implement the cost-reduction strategies of non-emergency preauthorization, application of medical necessity criteria, use of clinically appropriate services, and State review of individualized service plans for clients and of staffing patterns of residential services.

Section 11.22(b) prohibits the purchase of any residential dwelling to house clients with State funds.

Section 11.22(c) directs DHHS to submit a progress report no later than February 1, 2001 and a final report no later than May 1, 2002 to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division.

These sections became effective July 1, 2000. (FF)

Mental Health, Developmental Disabilities and Substance Abuse Services Reserve

S.L. 2000-67, Secs. 11.24(a)-(e) (HB 1840) create the Mental Health, Developmental Disabilities and Substance Abuse Services Reserve for System Reform and Olmstead (Reserve), within the Office of State Budget and Management. The Reserve shall be used to:

- Help finance programs providing community alternatives for residents of the State's mental health, developmental disabilities, and substance abuse services facilities.
- Facilitate compliance with the United States Supreme Court decision in Olmstead v. L.C. and E.W.
- Facilitate reform of the State's mental health, developmental disabilities and substance abuse services system.

DHHS must report periodically to the Legislative Study Commission on Mental Health, Developmental Disabilities and Substance Abuse Services and to the Joint Commission on Governmental Operations on actions regarding the Reserve.

These sections became effective July 1, 2000. (FF)

Licensure Exception for Certain Nonprofit Substance Abuse Facilities

S.L. 2000-67, Sec. 11.25A (HB 1840) provides that 24-hour nonprofit facilities for shelter and recovery from alcohol and substance addiction that use a 12-step, self help, peer role modeling, and self-

governance approach are excluded from State licensure otherwise required for facilities for the mentally ill, developmentally disabled, and substance abusers.

This section became effective July 1, 2000. (FF)

Limitations on Expansion of Intensive Home Visitation Program under Medicaid

S.L. 2000-67, Secs. 11.34(a)-(b) (HB 1840) prohibit the Department of Health and Human Services (DHHS) from amending the State Medicaid Plan to provide Medicaid reimbursement for intensive home visiting services and requires DHHS to arrange for an independent evaluation of the Intensive Home Visitation Program first-year pilot programs that began operation in 1998.

These sections became effective July 1, 2000. (JY)

AIDS Drug Assistance Program (ADAP)

S.L. 2000-67, Sec. 11.35(a) (HB 1840) authorizes the Department of Health and Human Services (DHHS) to use a portion of the funds appropriated to the AIDS Drug Assistance Program to implement a comprehensive information system the Department was directed to implement pursuant to Sec. 11.55(d) of S.L. 1999-237. The system shall meet the following additional requirements:

- Be patterned after the information management system under by the Elderly Drug Assistance Program.
- Provide instantaneous internal access to information.
- Include information on program usage patterns and demographics of participants.

Under current law, HIV-positive individuals with incomes at or below 125% of the federal poverty level are eligible for participation in the program. This section provides that in the fiscal year 2000-01, eligibility may be extended to individuals at or below 150% of the federal poverty level if the Office of State Budget, Planning and Management certifies that DHHS has met the requirements of this section.

This section became effective July 1, 2000. (EC)

Prescription Drug Assistance Program

S.L. 2000-67, Sec. 11.39 (HB 1840). See **Senior Citizens.**

Repeal Health Care Purchasing Alliance Act

S.L. 2000-67, Sec. 21.21 (HB 1840). See **Insurance**.

Food Establishment/Sanitation Requirements

S.L. 2000-82 (HB 1506) amends current law to provide that unlicensed boarding homes or housing developments (establishments) that prepare or serve food to regular boarders or residents are subject to the sanitation and inspection requirements set forth in G.S. 130A-248, governing the sanitation regulation of food and lodging establishments, if all of the following conditions are met:

- The establishment prepares or serves food for pay to 13 or more regular boarders or permanent houseguests.
- The houseguests or permanent boarders are 55 years or older or disabled.
- The establishment is not already regulated under G.S. 130A-235 governing sanitation regulation of schools and institutions.

Establishments in operation as of July 1, 2000 shall be required to correct or replace existing food service equipment only if the equipment presents an imminent hazard. Establishments beginning operation after

July 1, 2000 shall correct or replace food service equipment if the equipment presents a threat to public health.

This act becomes effective July 1, 2001. (JY)

Safety Professionals

S.L. 2000-110, as amended by S.L. 2000-140, Sec. 98 (SB 897, as amended by SB 1335), adds a new Article, entitled "Safety Profession" to Chapter 90 of the General Statutes, which governs medicine and allied occupations. The new article creates a State-sanctioned certification for "safety professional." Only those persons certified by the private Board of Certified Safety Professionals as either a Certified Safety Professional or an Associate Safety Professional may represent themselves as certified safety professionals.

Persons who are licensed as other professionals and are engaged in the practice of that profession; persons who practice within the scope of safety, injury, or illness prevention and who do not use specific titles; persons licensed as architects; and any person working under the supervision of a licensed architect are exempted.

This act becomes effective January 1, 2001. (EC)

Medical Care Commission Rules

S.L. 2000-111 (SB 1215) makes conforming changes to the General Statutes pertaining to the Medical Care Commission's authority to adopt rules regulating adult care homes and the Social Services Commission's authority to adopt rules pertaining to public assistance programs. The Social Services Commission retains authority to adopt rules for client assessment and independent case management activities administered by county departments of social services concerning programs of public assistance. The effect is to give both the Social Services Commission and the Medical Care Commission authority to make rules for State/County Special Assistance clients in adult care homes. It also makes it clear that the Medical Care Commission rules pertaining to transfer and discharge of adult care home residents shall be as stringent as the temporary rules adopted by the Secretary of the Department of Health and Human Services governing the transfer and discharge of adult care home residents.

This act became effective July 14, 2000. (JY)

Long Term Care Residents/Immunization

S.L. 2000-112 (SB 1234). See **Senior Citizens.**

Limit Liability/Defibrillator

S.L. 2000-113 (SB 1269). See **Civil Law and Procedure**.

Restraints in Facilities

Data Collection and Analysis. S.L. 2000-129 (HB 1520) amends G.S. 122C-60, which governs the use of physical restraint and seclusion in facilities servicing the mentally ill, developmentally disabled, and substance abusers, by requiring these facilities to collect data on each incident of use of restraint and seclusion, analyze the data at least quarterly, and take corrective action when necessary. The data collected must specify the type of procedure, time employed, alternatives considered or employed, and effectiveness. The Secretary (Secretary) of the Department of Health and Human Services (DHHS) must have access to the data upon request, subject to existing State and federal patient records disclosure laws.

This act also requires data collection regarding physical restraint used in residential child-care facilities. Data collected must be available to DHHS upon request, subject to State and federal laws on confidentiality, privilege, and disclosure.

Policies and Rules. This act directs facilities, licensed under Chapter 122C of the General Statutes, to implement policies and practices emphasizing alternatives to the use of physical restraint and seclusion. Only staff trained and competent in the proper use of and alternatives to restraints and seclusion may employ restraints and seclusion. Staff must be retrained at least annually.

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) must adopt rules to implement these provisions, taking into consideration federal regulations and national accreditation standards. The rules shall, among other matters, govern staff training and competence in alternative strategies to restraint and seclusion, methods to ensure the safe and appropriate use of restraints and seclusion, and facility self-monitoring for competence. DHHS may investigate complaints and inspect a facility at any time to ensure compliance.

This act also directs the Social Services Commission to adopt similar rules for residential childcare facilities for documenting the use of physical restraint and personnel and staff training requirements.

Reports of Death. This act requires licensed facilities for the mentally ill, developmentally disabled or substance abuser (including an inpatient psychiatric unit of a hospital licensed under Chapter 131E in the General Statutes, residential care facilities, family foster homes, or adoptive homes licensed under Article 1A of Chapter 131D of the General Statutes, and adult care homes licensed under Article 3 of Chapter 131D) to immediately report to the Secretary or DHHS the death of a client or resident if the death occurs within seven days of the use of physical restraint or seclusion, or report the death within three days if the death is a result of violence, accident, suicide, or homicide.

Violation of the reporting requirement may result in a civil penalty not to exceed $1,000 and not less than $500.

Report to Study Commission. The Secretary or DHHS shall report annually to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services each October 1. The report shall include the following:

- The level of compliance among facilities.
- Total number of facilities reporting any deaths.
- The number of deaths reported by each facility.
- The number of deaths investigated by the Secretary.
- The number of deaths related to the use of:
  - restraint or seclusion, in facilities for the mentally ill, developmentally disabled, or substance abuser;
  - physical restraint or time-out in residential child care facilities; or
  - physical restraint or physical hold in adult care homes.

This act becomes effective January 1, 2001. (FF)

Amend Certificate of Need

S.L. 2000-135 (HB 1184) requires a certificate of need for an ambulatory surgery center to open a satellite facility at a new location or for a hospital to relocate and expand its operating room. This act was enacted in response to the North Carolina Court of Appeals decision in Christenbury v. Department of Health and Human Services. The Court ruled in Christenbury that an existing ambulatory surgery center can open a satellite facility within its service area for less than $2 million in capital costs without obtaining a new certificate of need, even though a new license is required for the new facility. This act will expire July 1, 2001 and does not apply to pending litigation.

This act became effective July 14, 2000. (JY)

Regulation of Midwifery

S.L. 2000-140, Sec. 60 (SB 1335). See **State Government.**

Changes in Prescription Drug Benefits/State Health Plan

S.L. 2000-141 (**HB 1855**). See **Insurance**.

Health and Wellness Trust Fund

S.L. 2000-147 (HB 1431) creates the Health and Wellness Trust Fund (Trust Fund) and the Health and Wellness Trust Fund Commission (Commission). Also created by the same legislation is the Tobacco Trust Fund and the Tobacco Trust Fund Commission. (See also **Agriculture** for a summary of this part of this act.)

The Trust Fund shall receive 25% of the payments received by the State as a result of the 1998 Master Settlement Agreement. (NC V. Phillip Morris, Inc. etal). The Commission, consisting of 18 members, is established to govern the distribution of these funds in accordance with this act. To create a Reserve Fund, the Trust Fund may spend only 50% of the monies received for the years 2001-2025. Interest and investment earnings of the Reserve Fund may be spent, but not the principal.

Funds distributed by the Trust Fund may be used to:

- Address the health needs of vulnerable and underserved populations in North Carolina.
- Fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and increase the capacity of communities to respond to the health needs of the public.
- Develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of North Carolina citizens with priority on preventing, reducing, and remedying the health effects of tobacco.

Eligible applicants are:

- State agencies.
- Local governments or other political subdivisions of the State or a combination of such entities.
- Nonprofit corporations which have a significant purpose of promoting the public's health, limiting youth access to tobacco, or reducing the health consequences of tobacco use.

The Commission shall establish guidelines and criteria for the application, evaluation, and allocation of the Trust Fund monies as grants. The Commission must report each November 1 to the Joint Legislative Commission of Governmental Operations and the chairs of the Joint Legislative Health Care Oversight Committee.

This act became effective August 2, 2000. (EC)

Respiratory Care Practice Act

S.L. 2000-162, Secs. 1-3 (HB 1340) create a North Carolina Respiratory Care Board (Board) and require respiratory care practitioners to obtain licensure no later than October 1, 2002. The Board will consist of ten members: two respiratory care therapists, four physicians, two members of the public, and one member each from the North Carolina Hospital Association and the North Carolina Association of Medical Equipment Services.

Licensure requirements include completion of an approved respiratory care education program and the basic Cardiac Life Support program and passage of the Board exam. Persons currently practicing respiratory care who have not completed the required educational programs may apply for a temporary license to engage in the provisional practice of respiratory care until October 1, 2002. Those applicants must pass the board exam during the two-year provisional period to continue practicing respiratory care after October 1, 2002. Exempt from licensure requirements are:

- Licensed, registered, or certified health care professionals performing respiratory care therapy as part of their scope of practice.
- Respiratory care students working under the supervision of a licensed respiratory care therapist.

- United States military, Public Health Service, or Veterans Administration employees while performing respiratory care as part of their duties.
- Persons who perform "support" services, such as delivering and setting up respiratory care apparatus or giving instructions on the use, fitting, and application of the apparatus.

These sections become effective October 1, 2000. (JY)

Prompt Payment of Claims

S.L. 2000-162, Secs. 4(a)-(b) (HB 1340). See **Insurance**.

Spay/Neuter Program

S.L. 2000-163 (SB 1184) creates a voluntary funding mechanism to financially assist local governments offering low-income persons reduced cost spay/neuter services for their dogs and cats, and provide a statewide education program on the benefits of spaying and neutering pets. The Department of Health and Human Services is to administer the program.

To support this program, eligible counties may impose an additional $.50 fee for the cost of rabies tags, and use $10 from each Animal Lovers special license plate, in addition to any funds the General Assembly appropriates. Of the total funds available, 20% must be used for the statewide education program, up to 20% may be used to defray the costs of administering the program, and the remaining funds are to distributed quarterly to eligible counties and cities. Eligible counties and cities are those that offer year-round spay/neuter programs to low-income persons.

This act becomes effective January 1, 2001. (EC)

Expanded Pap Smear Coverage and Plan Reinstatement Changes/State Health Plan

S.L. 2000-184 (SB 432). See **Insurance.**

Amend Physician Practice Act

S.L. 2000-184, Sec. 5 (SB 432) establishes immunity from civil liability for persons or entities that in good faith, without fraud or malice, report, investigate, or initiate or conduct proceedings regarding acts or omissions of physician licensees or applicants for licensure that constitute a violation and a grounds for revocation, suspension, annulment or denial of a license under the Physician Practice Act. It further insulates from civil liability any person who testifies in good faith, without fraud or malice, in any proceeding relating to the fitness of a licensee or applicant or who makes a recommendation to the North Carolina Medical Board in the nature of a peer review in good faith, without fraud or malice.

This section became effective August 2, 2000. (FF)

Amend Optometry Practice Act

S.L. 2000-184, Sec. 6 (SB 432) amending the Optometry Practice Act, allows the Optometry Board, upon finding that a licensee has violated the Act, to place the licensee on probation, or utilize other disciplinary measures, such as a administering public or private reprimand or private letter of concern and requiring the licensee to do one or more of the following:

- Make specific or monetary redress.
- Provide free public or charity service.
- Complete educational, remedial training or treatment programs.
- Pay a fine.

- Reimburse the Board for disciplinary costs.

This section also establishes immunity from civil liability for persons or entities that in good faith, without fraud or malice, report, investigate, or initiate or conduct proceedings regarding acts or omissions of licensees or applicants for licensure that constitute a violation and a grounds for discipline, suspension, revocation or denial of a license. It further insulates from civil liability any person who testifies in good faith, without fraud or malice, in any proceeding relating to the fitness of a licensee or applicant or who makes a recommendation to the Board in the nature of a peer review in good faith, without fraud or malice.

This section became effective August 2, 2000. (FF)

Human Services

Quality Criteria for Long-Term Care

S.L. 2000-67, Sec. 11.3 (HB 1840). See **Senior Citizens.**

Long-Term Care Services Data

S.L. 2000-67, Secs. 11.4(a)-(b) (HB 1840). See **Senior Citizens**.

Medicaid Program for Family Planning Services

S.L. 2000-67, Sec. 11.5 (HB 1840). See **Children and Families.**

Extend Adult Care Home Moratorium/Study

S.L. 2000-67, Secs. 11.9(a)-(b) (HB 1840). See **Senior Citizens.**

Adult Care Homes Reimbursement Rate Increase/State Auditor Study

S.L. 2000-67, Secs. 11.12(a)-(b) (HB 1840). See **Senior Citizens.**

Transfer Energy Division from Department of Commerce to Department of Health and Human Services and Department of Administration

S.L. 2000-67, Secs. 14.18(a)-(c) (HB 1840). See **Commercial Law**.

Blind Services Technical Changes

S.L. 2000-121 (SB 927) makes numerous technical, stylistic, and conforming changes to statutes in Chapter 111 (Aid to the Blind) and other statutes related to the blind and visually impaired. This act also makes the following substantive changes:

- Amends G.S. 111-4 to require a physician or optometrist to report to the Department of Health and Human Services (DHHS) the results of an examination of a person who is found to be blind.

- Repeals G.S. 111-5 which directed DHHS to maintain bureaus of information and industrial aid designed to aid the blind in finding employment.
- Amends the statute governing training schools and workshops, the rehabilitation center for the blind, and in-home services so that these programs include the visually impaired.
- Replaces the definition of "visually handicapped persons" with definitions for "blind persons" which is consistent with federal definition and "visually impaired person".
- Requires the Division of Services for the Blind and the Division of Vocational Rehabilitation Services to specify which agency can most appropriately meet the needs of the visually impaired.
- Narrows the eligibility for relief under the Article governing aid to the blind to include just the blind and not those whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential.
- Provides that an award or denial of aid will be reviewed in an administrative hearing pursuant to Article 3 of Chapter 150B, rather than in a hearing before the Commission for the Blind.
- Amends the statute governing the authority of DHHS to operate business enterprises suitable for the blind, to receive grants for the benefit of the blind, and to cooperate with the federal government in the rehabilitation of the blind so that these programs include the visually impaired as well as the blind.
- Limits the preference in operating vending facilities to the blind and not to the visually handicapped.
- Amends the statute governing coin-operated vending machines to include the visually impaired as beneficiaries of programs funded by profits from coin-operated vending machines.
- Amends the statute governing operation of highway vending facilities on North Carolina highways to delete the statutorily-established set-aside rates and authorizes the Commission for the Blind to establish the rates.
- Expands the Commission for the Blind from eleven to thirteen members.

This act became effective July 14, 2000. (JY)

Adult Protective Service – Complaint Investigation

S.L. 2000-131 (HB 1571). See **Senior Citizens**.

Criminal Record Checks/Long-term Care

S.L. 2000-154 (SB 1192). See **Senior Citizens.**

Studies

Legislative Research Commission

Social Anxiety Disorder

S.L. 2000-138, Sec. 2.1(4)b (SB 787) authorizes the Legislative Research Commission to study social anxiety disorder.

New/Independent Studies/Commissions

Legislative Study on Prescription Drug Assistance for Elderly and Disabled Persons

S.L. 2000-67, Secs. 20.2(a)-(g) (HB 1840). See **Senior Citizens.**

Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services

S.L. 2000-83 (HB 1519) establishes the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services (Committee) composed of sixteen members with eight members from each house. The purpose of the Committee is to oversee development of a plan to reform the current system of public mental health, developmental disabilities and substance abuse services and address other issues including the governance and financing of services, downsizing of state hospitals, developmental disabilities services, quality of services, and ongoing involvement of consumers and families. The Committee must submit a progress report on the development of the plan and an outline of an implementation process for downsizing the four State psychiatric hospitals to the 2001 General Assembly. The Committee must make a report to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse and to the Joint Appropriations Committees on Health and Human Services by October 1, 2001 and March 1, 2002. Interim reports are required on the development and implementation of the plan to the 2001 General Assembly by May 1, 2002, the 2003 General Assembly upon its convening, and the 2003 General Assembly by May 1, 2004. A final report is due to the 2005 General Assembly upon its convening.

Also, S.L. 2000-67, Sec. 11.23(a) (HB 1840) requires the Department of Health and Human Services to transfer $350,000 of the funds appropriated to it to the General Assembly, Legislative Services Office to fund the study of the mental health and developmental disabilities services system reform initiative as established by S.L. 2000-83 (HB 1519). (JY)

Referrals to Departments, Agencies, Etc.

Medicaid Program for EPSDT Eligible Children

S.L. 2000-67, Sec. 11.5 (HB 1840) directs the Department of Health and Human Services is to study the feasibility of authorizing Medicaid reimbursement for children eligible for Early and Periodic Screening Diagnosis and Treatment (EPSDT) services by providers who are eligible for reimbursement for these services under the Teachers' and State Employees Comprehensive Major Medical Plan and under the Health Insurance Program for Children.

Study Multiunit Assisted Housing with Services Facilities

S.L. 2000-67, Sec. 11.11 (HB 1840). See **Senior Citizens.**

Replacement of Dorothea Dix Hospital

S.L. 2000-67, Sec. 11.23(c) (HB 1840) requires the Department of Health and Human Services to proceed with plans for construction of a new State psychiatric hospital to replace Dorothea Dix and report no later than October 1, 2000 on the status of the plans including identification of potential sites.

Department of Health and Human Services and Administrative Office of the Courts Study of the Child Support System.

S.L. 2000-138, Secs. 13.1-13.3 (HB 1840). See **Children and Families.**

Department of Health and Human Services, Department of Public Instruction, and Department of Agriculture and Consumer Services – Hunger Program Studies

S.L. 2000-138, Secs. 14.1-14.3 (SB 787). See **Children and Families**.

Developmental Disabilities Study

S.L. 2000-67, Sec. 11.23(b) (HB 1840) as amended by S.L. 2000-138, Sec. 15.1 (SB 787), directs the Department of Health and Human Services (DHHS), in consultation with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (Oversight Committee), to study whether a new division of developmental disabilities should be established within DHHS and report its findings and recommendations no later than January 1, 2001 to the Oversight Committee, the House Appropriations Subcommittee on Health and Human Services, and the Senate Appropriations Committee on Human Resources. (FF)

Department of Health and Human Services Adolescent Pregnancy Prevention Study

S.L. 2000-138, Secs. 16(a)-(c) (SB 787). See **Children and Families**.

Referrals to Existing Commissions/Committees

Joint Legislative Health Care Oversight Committee

S.L. 2000-138, Secs. 6.1-6.4 (SB 787) authorize the Joint Legislative Health Care Oversight Committee to study:

- Mandatory disqualifiers for employment in rest homes, adult care homes, home health care, and other industries which provide care and services to the elderly.
- The need for improved patient access to pain treatment and the need to revise current laws, regulations, or guidelines to eliminate undue restrictions on pain management while continuing to protect public health.
- Criminal background checks requirements for the adult care industry.
- The establishment of mandatory disqualifying criminal convictions for employment with rest homes, adult care facilities, and home health care agencies in North Carolina. (JY)

Chapter 11
Insurance

Trina Griffin (TG), Frank Folger (FF)

Enacted Legislation
Health and Life Insurance

Repeal Health Care Purchasing Alliance Act

S.L. 2000-67, Secs. 21.2(a)-(b) (HB 1840) repeal the Article that created the State Health Plan Purchasing Alliance Board (Board) and that authorized the Board to create purchasing alliances of small employers to provide self-employed individuals and small employers with affordable health care coverage comparable with large employer group health plans.

These sections become effective December 31, 2000. (FF)

Credit Insurance Clarification

S.L. 2000-132 (HB 1518) clarifies the requirements for issuance of group credit accident and health insurance policies. This act provides that:

- All debtors of installment indebtedness or within a class of debtors meeting determined debt-related or purchase-related conditions shall be eligible for coverage.
- Policies may include a provision that "debtors" shall include debtors of subsidiary corporations or affiliated corporations, proprietors, or partnerships, as long as they are under common control.
- Policy premiums must be paid from either the creditor's funds, charges collected from the insured debtors or both.
- Any policy with a premium derived in any way from insured debtors' monies must exclude from eligibility, debtors who at the date of issue have outstanding debt and cannot prove individual insurability, unless the group is structured on an actuarially sound basis.
- Any policy with a premium in no way derived from insured debtors' monies must insure all eligible debtors except those whose individual insurability cannot be satisfactorily proven to the insurer.
- A policy may only be issued if the group of eligible debtors increases minimally by 100 entrants a year or may reasonably be expected to receive at least 100 new entrants during the first policy year, and if the policy reserves the insurer's right to require proof of individual insurability if less than 75% of the new entrants become insured.
- Policy premiums shall be actuarially equivalent to rates authorized by Article 57 of Chapter 58 of the General Statutes dealing with credit insurance coverage generally.

This act became effective July 1, 2000. (FF)

Prompt Payment of Claims

S.L. 2000-162, Secs. 4(a)-(b) (HB 1340), adding a new section to Article 3 of Chapter 58, require a licensed insurer to pay a clean claim for covered services submitted by a claimant within 30 days of receipt. A claimant includes a health care provider or facility responsible for, contractually permitted to, or validly assigned the right to directly make claims against an insurer. Within 30 days of receipt of the claim, the insurer must send the claimant, by electronic or paper mail, payment or notice that:

- The claim is denied;

- The proof of loss is either inadequate or incomplete;
- The claim was not submitted on the form required by the health plan or the contract between the provider or facility and the insurer;
- Coordination of benefits information is needed in order to pay the claim; or
- The claim is pending based on non-payment of fees or premiums

Notice requirements Notice must, as appropriate, specify all good faith reasons for denial or non-payment, itemize all information needed by the insurer to complete processing of the claim, specify the clinical rationale or reference document provisions that specify the clinical rationale for the decision, and include any needed forms and instructions for completing the forms.

If the claim remains unpaid after 60 days and the insurer is not awaiting requested information, the insurer must send the insured a claim status report and subsequently send reports to the insured and claimant every 30 calendar days after that, while the claim is unresolved.

The insurer must pay any undisputed portion of a claim and send notice of denial or contest of any other portion of the claim within 30 days of receipt.

Payment After Receiving Requested Information The insurer has 30 days to pay a claim after it receives requested information. If the insurer does not receive the requested information within 90 days of making the request, it must deny the claim, send notice of denial with specific reasons for denial and inform the claimant that the claim can be reopened, by compliance, within one year

Interest Accrual Payments not made pursuant to the required deadlines bear interest at 18 percent annually, with interest beginning the day after the date the claim should have been paid.

Deadlines for Submitting Claims Insurers may require claimants to submit claims within 180 days of providing care or discharge from a facility but no less. Unless otherwise agreed, reasonable impossibility justifies filing a late claim, but one year is the maximum deadline.

Record Keeping Insurers must maintain written or electronic records demonstrating compliance with this act, in particular, when it received, paid, denied, or held pending each claim and how it reviewed and handled each claim.

These sections become effective July 1, 2001 and apply to claims received on or after that date. (FF)

Miscellaneous

Insurance Regulatory Charge

S.L. 2000-109, Sec. 3 (HB 1854). See **Taxation**.

Insurance License Fees/Reciprocity

S.L. 2000-122, Sec. 2 (HB 1699) establishes a system of reciprocity for the licensing of insurance agents and brokers ("producers") in compliance with the federal Gramm-Leach-Bliley Act. This section provides that:

- A nonresident can obtain a producer license in North Carolina if:
  - The nonresident is a licensed resident in good standing in his home state;
  - The nonresident has submitted the proper fees and application;
  - The nonresident has submitted a copy of his home state licensure application (or completed a Uniform Application); and
  - The home state awards nonresident licenses on the same basis as North Carolina.
- A nonresident applicant is exempt from the prelicensing education and examination requirements if:
  - The applicant is currently licensed in his home state;
  - The application is received within 90 days after cancellation of the applicant's previous license and the home state certifies that at the time of the cancellation the applicant was in good standing; or

- The home state's producer database indicates the applicant is or was licensed in good standing.

- Satisfaction of the continuing education requirements in the applicant's home state will satisfy the continuing education requirements in this State as long as there is a reciprocal agreement for identical treatment for North Carolina applicants in that state.
- A producer must report to the Commissioner of Insurance any administrative action or criminal prosecution taken against the producer.

This provision makes conforming changes to other licensing provisions in Chapter 58, specifically those dealing with waiver of the written examination requirement for nonresidents, to include a reference to the new reciprocity section.

This provision also:

- Changes the examination requirements for financial analysts and examiners who work for the Department of Insurance. In addition to satisfying the minimum education requirements, financial analysts and examiners must have taken all courses necessary to qualify for the CPA examination based on the examination requirements that were in effect at the time the applicant graduated from an accredited college or university rather than at the time of employment with the Department.
- Expands the definition of "person" as used in the Articles regarding Essential Property Insurance for Beach Area Property and Fair Access to Insurance Requirements. Both Articles involve the North Carolina Insurance Underwriting Association, which was established as a market of last resort for customers who have difficulty obtaining property insurance in the voluntary market. A "person" as used in these Articles shall include the State of North Carolina or any county, city, or other political subdivision of the State of North Carolina. The amended definition clarifies that cities and counties with insurable property interests are eligible to apply to the Association for coverage under these plans.
- Restricts the definition of a motor club or association "branch or district office," which must be licensed by the Commissioner of Insurance, to a "principal place of business and a place of business used by clients in meeting or dealing with motor club representatives in the normal course of business." Previously, it was defined as "any physical location, other than the home office, where representatives conduct business."
- Eliminates the requirement that the Commissioner of Insurance review plans for county, city and school district buildings comprising less than 10,000 square feet.

This provision became effective July 14, 2000. The act also amends provisions regarding the Manufactured Housing Board. For those provisions, see **State Government.** (TG)

Property and Casualty Insurance

Fire Insurance Public Protection

S.L. 2000-176 (HB 1696) authorizes the Commissioner of Insurance (Commissioner), who is also the State Fire Marshal, to establish public protection districts in cities with populations of 100,000 or fewer and for all rural areas with regard to both residential and commercial property insurance. The Commissioner must use standards equivalent to those used by the Insurance Services Office (a private corporation) or any successor organization when establishing and modifying the public protection districts. The standards developed by the Commissioner are subject to the rulemaking provisions of the North Carolina Administrative Procedure Act. The classifications issued by the Commissioner are subject to appeal in Wake County Superior Court.

This act became effective August 2, 2000 and any changes to classifications of insurance public protection districts issued by the Commissioner pursuant to this legislation will not become effective until at least 90 days after the standards are adopted by the Department of Insurance and will apply to policies issued or renewed on or after that date. (TG)

State Children's Health Insurance Program

Waive NC Health Choice Waiting Period for Special Needs Children

S.L. 2000-67, Sec. 11.8(a) (HB 1840). See **Health and Human Services.**

The Teachers' and State Employees' Comprehensive Major Medical Plan

Prescription Drug Benefit Changes

S.L. 2000-141 (HB 1855) makes several changes to the Teachers' and State Employees' Comprehensive Major Medical Plan (Plan) regarding prescription drugs. These changes include the following:

- Authorizes the Plan Administrator and the Board of Trustees to set the allowable charges for outpatient prescription drugs, except the charges shall not be greater than a pharmacy's customary charge to the general public for a prescription. In the past, the Plan has set the allowable charges at 90% of the average wholesale price of an outpatient prescription drug less a copayment amount of $10, $15, or $20, and it has paid a $6 dispensing fee per prescription. For fiscal year 2000-2001, the Plan will set the allowable charges at 90% of the average wholesale price for brand prescriptions, the maximum allowable charge limits for generic drugs covered by the Health Care Financing Administration (HCFA) rules, and 80% of the average wholesale price of generic drugs not covered by the HCFA rules. The dispensing fee is reduced from $6 to $4 per prescription. This act also states that the Plan and its pharmacy benefits manager shall not provide coverage for erectile dysfunction, growth hormone, antiwrinkle, weight loss, or hair growth drugs unless medically necessary to the member's health.
- Authorizes the Plan to contract with a pharmacy benefit manager to help manage the Plan's outpatient prescription drug program.
- Adds a fourth tier copayment of $25 for each branded or generic prescription drug that is not on a formulary developed by the Plan's pharmacy benefits manager.
- Authorizes the Plan to develop and implement a case management and disease management program.
- Amends the State Retirement System by providing for non-contributory health plan premiums for all retired teachers, State employees, and members of the General Assembly, not just those that were employed prior to October 1, 1995. An identical provision was enacted in S.L. 2000-184, Secs. 1(a)-(b) (SB 432).

The section that sets the allowable charges for outpatient prescription drugs for fiscal year 2000-2001 became effective August 1, 2000. The remaining provisions became effective August 2, 2000. (TG)

Expanded Pap Smear Coverage and Plan Reinstatement Changes

S.L. 2000-184, Secs. 1-4 (SB 432) direct:

- The Teachers' and State Employees' Comprehensive Major Medical Plan (Plan) to cover 100% of the cost of one annual Pap smear for any covered female under the Plan's wellness benefits. This change affects covered females under 50 since the Plan's wellness benefit previously covered the cost of an annual Pap smear only for females over 50.
- Individuals who have been excluded from membership in the Plan for filing fraudulent claims to be considered for reinstatement when there has been a five-year cessation of coverage and a full and complete restitution has been made to the Plan for all fraudulent claim amounts.

- The State Retirement System to provide for non-contributory health plan premiums for all retired teachers, State employees, and members of the General Assembly, not just those that were employed prior to October 1, 1995. An identical provision was enacted in S.L. 2000-141, Secs. 6(a)-(b) (HB 1855).

These sections became effective August 1, 2000. These sections also amend the physician and optometrist licensing and disciplinary laws. For those provisions, see **Health and Human Services.** (TG)

Studies
Legislative Research Commission

Insurance Studies

S.L. 2000-138, Secs. 2.1(2)a-c (SB 787) authorize the Legislative Research Commission to study:

- Insurance availability in beach and coastal areas;
- Employer-sponsored, self-insured group health benefit plans; and
- Parity in health insurance coverage for mental illness and chemical dependency benefits.

Chapter 12
Local Government

Erika Churchill (EC), Kristen Crossen (KC), Esther Manheimer (EM)

Enacted Legislation

The Hurricane Floyd Recovery Act of 1999

S.L. 1999-463 (1999 Extra Session) (HB 2). See **State Government.**

Lumberton/Pineville/Chapel Hill Traffic Violations

S.L. 2000-37 (HB 1553), amending S.L. 1997-216, as amended by S.L. 1999-17, allows the City of Lumberton and the Town of Pineville 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 photographic, video or electronic camera with a vehicle sensor that works with a traffic control device to automatically produce photographs, video, or digital images of vehicles violating these types of statutes or ordinances. This act also restores the applicability of G.S. 160A-300.1 to the City of Greenville. Greenville was authorized to use the red light camera system in 1999 but was erroneously deleted by a later act that same year.

S.L. 2000-97 (SB 1447), amending S.L. 1997-216, as amended by S.L. 1999-17, also allows the Town of Chapel Hill to use the system, but only for violation of statutes or ordinances related to traffic signals.

S.L. 2000-37 became effective June 30, 2000.

S.L. 2000-97 became effective July 10, 2000. (EM)

Grace Period for Fire Districts to File Certificates of Eligibility for Firemen's Relief Fund Monies

S.L. 2000-67, Sec. 26.21 (HB 1840) provides that by October 31 of each year, the clerk of each fire district that has a local board of trustees shall file a certificate of eligibility with the Insurance Commissioner. If this certificate is not filed on or before January 31 of the following year, then the district forfeits its next payment from the Fireman's Relief Fund to its trustees, and the Insurance Commissioner transfers the forfeited monies to North Carolina State Firemen's Association.

This act became effective July 1, 2000 and applies retroactively to October 31, 1998. (KC)

Full-Time County Fire Marshals in the Firemen's and Rescue Squad Workers' Pension Fund

S.L. 2000-67, Sec. 26.22 (HB 1840). See **Employment.**

Establish Metropolitan Planning Boards

S.L. 2000-80 (HB 1288). See **Transportation.**

Butner Water and Sewer Bonds

S.L. 2000-81 (HB 1629). See **Taxation.**

Dare County Underground Utilities

S.L. 2000-106 (SB 1463) amends a local act passed in 1999 granting Dare County the authority to create utility districts to raise and expend funds for the undergrounding of electric utility lines. The local act allowed Dare County to tax up to $1 per month the electric power service bills of residential customers in the district and up to $5 per month on commercial and industrial accounts.

This act grants Dare County the ability to expand the purpose of the utility districts to include undergrounding telephone lines. The county may levy a tax of up to $1 per month on each residential telephone line and $5 on each commercial or industrial telephone line. These amounts are in addition to the existing electricity charges.

This act became effective July 12, 2000. (EC)

2000 Fee Bill - Jail Fees for Local Governments

S.L. 2000-109 (HB 1854). See **Taxation**.

Reallocate Water Bond Funds

S.L. 2000-156 (SB 1381). See **Taxation**.

Building Inspection/Condemnation

S.L. 2000-164 (SB 1152) makes several changes to the statutes governing the authority of local building inspectors to allow for condemnation of non-residential buildings or structures within a community development target area which appear to be vacant or abandoned and so dilapidated as to cause a public nuisance. If the owner fails to take appropriate corrective action after proper notification, the local government may cause the structure to be removed or demolished and a lien placed on the property for the costs incurred.

This act became effective August 2, 2000. (EC)

Butner Powell Bill Funds Administration

S.L. 2000-165 (HB 1498), amending G.S. 136-41.1, that governs Highway Funds appropriation to municipalities and the Town of Butner, allows the Butner Town Manager to administer the monies received by Butner from the Highway Funds, commonly known as Powell Bill funds. Previously, State Board of Transportation members administering the Highway Fund in Granville County administered the Powell Bill funds for Butner.

This act became effective July 1, 2000. (EC)

Refund Overpayment of Deed Stamp Tax

S.L. 2000-170 (HB 1544). See **Taxation**.

Close Loophole Minimum Housing Standard

S.L. 2000-186 (SB 414) amends Part 6, of Article 19 of Chapter 160A, governing minimum housing standards applicable to municipalities in counties with a population exceeding 71,000, by the last federal census. This act sets out procedures cities must follow when ordering the repair or demolition of substandard housing. Before a municipality may require property owners to repair or demolish sub-standard housing, the following must occur:

- The owner of the property must be provided notice and a hearing.
- A hearing officer must determine that the dwelling is unfit for human habitation, make written findings of fact, and issue an order served on the owner requiring the owner to repair or close the dwelling.
- The dwelling must have been closed for one year pursuant to the order.
- The municipal governing body must determine that the owner has abandoned the intent to repair the dwelling.
- The municipal governing body must find that the closed dwelling is inimical to the health, safety, and morals of the community because the property would continue to deteriorate, become a fire and safety hazard, be a threat to children and vagrants, cause or contribute to blight and deterioration of property values in the area, render unavailable property otherwise available to ease the affordable housing shortage, and attract persons intent on criminal activity.

If the above conditions are met, the municipality may enact an ordinance and serve notice on the owner that states the following:

- The owner must repair, demolish, or remove the dwelling within 90 days if the cost to repair the dwelling to render it fit for human habitation can be done for 50% or below the current value of the dwelling.
- The owner must demolish and remove the dwelling within 90 days if the cost to repair the dwelling to render it fit for human habitation exceeds 50% of the current value of the dwelling.

If the owner fails to comply, the municipality must repair or demolish and remove the dwelling.

This act became effective August 2, 2000. (KC)

Chapter 13
Resolutions

Joint Resolutions

2000 Extra Session

2000 Extra Session Adjournment Resolution

Res. 1 (SJR 3)

2000 Regular Session

Meet at State Capital

Res. 2000-2 (SJR 1495)

Commemorate State Capital

Res. 2000-3 (HJR 1860)

Honoring Thomas H. Davis

Res. 2000-4 (HJR 1485)

Honor W. D. Mizell

Res. 2000-5 (SJR 819)

Honor David Clark

Res. 2000-6 (HJR 1463)

2000 Adjournment Resolution

Res. 2000-7 (SJR 1558)

Chapter 14
Senior Citizens

John Young (JY)

Enacted Legislation

Health Care Facility/CCRC Tax Exempt

S.L. 2000-20 (HB 1573). See **Taxation**.

Respite Care Program No Sunset

S.L. 2000-50 (HB 1514). Before August 14, 1998, State law provided that State reimbursement rates under the State respite care program for temporary out-of-home placement of an elderly or disabled adult could not exceed the State's reimbursement rate for long-term care provided in an adult care home. Effective August 14, 1998 until July 1, 2000, S.L. 1998-97 (SB 1149) repealed the statutory limitation. S.L. 2000-50 (HB 1514) repeals the July 1, 2000 sunset. The affect of this act is to allow the payment rate to be established by the Division of Aging.

This act also directs the Medical Care Commission to adopt rules to define the circumstances under which adult care homes may admit residents on a short-term basis for the purpose of caregiver respite. Currently, all residents of adult care homes must complete the same admission process whether for respite care or for a regular stay.

This act became effective June 30, 2000. (JY)

Health Care Registry Reports

S.L. 2000-55 (SB 1179). See **Health and Human Services**.

Extend Adult Care Home Moratorium/Study

S.L. 2000-67, Secs. 11.9(a)-(b) (HB 1840) extend the moratorium first enacted by S.L. 1997-443 on the approval of additional adult care home beds to September 30, 2001. The following exceptions apply:

- Plans submitted for approval prior to May 18, 1997.
- 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;
- Beds in facilities for the developmentally disabled with six beds or less.
- 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.
- If the county commission determines that there is a substantial need in the county.

Section 11.95(b) requires the Department of Health and Human Services to study the adult care home resident population and recommend licensure categories appropriate to the various populations being served and identify current funding sources available to residents of adult care homes. (See also **Studies**.)

These sections became effective July 1, 2000. (JY)

Funds for Training Programs for Recruitment of Certified Nursing Assistants in Nursing Facilities

S.L. 2000-67, Secs. 11.11A(a)-(c) (HB 1840) require the Department of Health and Human Services to use $500,000 of its appropriation to develop and implement on-site internet training or other innovative training programs designed to improve recruitment and reduce turnover of certified nursing assistants in nursing facilities. The Community Colleges System Office shall work with nursing home providers to develop and implement the training program and shall test it in at least five nursing facilities in the State. The Community Colleges System Office shall report to the North Carolina Study Commission on Aging not later than June 30, 2001 on the use of the funds and implementation of the program.

These sections became effective July 1, 2000. (JY)

Adult Care Homes Reimbursement Rate Increase/State Auditor Study

S.L. 2000-67, Sec. 11.12(a) (HB 1840) raises the State/County Special Assistance maximum rate for adult care home reimbursement from $1,016 to $1,062 per month per resident effective October 1, 2000. Section 11.12(b) requires the Office of the State Auditor to conduct a study of the cost reimbursement system for residents receiving such assistance. (See also **Studies.**)

This section became effective July 1, 2000. (JY)

Prescription Drug Assistance Program

S.L. 2000-67, Sec. 11.39 (HB 1840) appropriates $1,000,000 to the Senior Prescription Drug Assistance Program (Program) established under S.L. 1999-237, Sec. 11.1(b) for fiscal year 2000-2001. The appropriation for fiscal year 1999-2000 was $500,000. The Program assists eligible seniors to pay for outpatient prescription drugs. Eligible persons must be 65 and older, not eligible for full Medicaid benefits, with an income not more than 150% of the federal poverty level, and diagnosed with cardiovascular disease or diabetes.

This section became effective July 1, 2000. (JY)

Immunization of Long Term Care Residents

S.L. 2000-112 (SB 1234) requires adult care homes and nursing homes to ensure that residents and employees are immunized against influenza each year and that residents are also immunized against pneumococcal disease. The immunization requirement for pneumococcal disease became effective September 1, 2000 and the immunization requirement for influenza becomes effective September 1, 2001. No person is be required to receive either vaccine if it is medically countraindicated, against the person's religious beliefs, or the person refuses the vaccine after being fully informed of the health risks of not being immunized. The Department of Health and Human Services is directed to make available to adult care homes and nursing homes educational and informational materials pertaining to vaccinations. The Commission for Health Services is authorized to make rules regulating these immunizations.

This act became effective July 14, 2000. (JY)

Adult Protective Service – Complaint Investigation

S.L. 2000-131 (HB 1571) establishes time frames for local departments of social services personnel to respond to complaints under the Adult Protective Services statute (APS). Certain time frames for the APS had been in effect since 1973 until the 1999 General Assembly enacted Senate Bill 10. Senate Bill 10 changed the APS time frames to correspond to time frames for investigating complaints under the adult

care home resident's bill of rights. This act returns the APS to time frames existing prior to the passage of Senate Bill 10 in 1999 to require the local director of social services to initiate evaluation of the allegation immediately upon receipt of a complaint under the APS if the complaint alleges danger of death in an emergency as defined in G.S. 108A-101(9); or within 24 hours if the complaint alleges danger of irreparable harm in an emergency as defined in G.S. 108A-101(9); and within 72 hours otherwise. This act directs the evaluation to be completed within 30 days for allegations of abuse and neglect and within 45 days for allegations of exploitation.

This act became effective July 7, 2000. (JY)

Criminal Records Checks/Revisions/Long Term Care

S.L. 2000-154 (SB 1192) makes the following changes to the current law governing any criminal background checks of applicants for certain positions in long-term care facilities:

- Makes it a Class A1 misdemeanor for an applicant for employment in adult care homes, nursing homes, or home care agencies to falsify information on employment applications.
- Provides that only a State record check is required if the applicant has been a resident of North Carolina for five or more years. A State and federal record check is required if the applicant has been a resident of North Carolina for less than five years.
- Allows the conditional employment of an applicant if the applicant consents to the record check and the request for the record check is made within five business days after the applicant begins working.
- Provides for immunity from liability of the entity and the employees of the entity for failure to consider criminal history information not contained in the criminal history record check requested and received.
- Extends similar record checks, conditional employment, and immunity from liability provisions for certain mental health, developmental disabilities, and substance service facilities.
- Adds disclosure requirements for units in nursing homes that provide special care for persons with Alzheimer's disease or other dementias when the special care unit is especially designed for residents with Alzheimer's disease or other dementias.
- Adds a provision authorizing the Medical Care Commission to adopt rules for the adult care portion of combination nursing/adult care homes.

The criminal background check and disclosure requirements are effective January 1, 2001. The remainder of this act became effective July 13, 2000. (JY)

Studies

New/Independent Studies/Commissions

Legislative Study on Prescription Drug Assistance for Elderly and Disabled Persons

S.L. 2000-67, Sec. 20.2 (HB 1840) establishes a 12-person Commission to determine the feasibility of assisting elderly and disabled North Carolina residents who need assistance purchasing prescription drugs. The Commission shall make interim reports to the 2001 General Assembly on January 1, 2001 and on May 1, 2002 and make its final report to the 2003 General Assembly.

Referrals to Departments, Agencies, Etc.

Quality Criteria for Long-Term Care

S.L. 2000-67, Sec. 11.3 (HB 1840) requires the Department of Health and Human Services in conjunction with the Institute of Medicine to convene a special work group to develop criterion-based indicators for monitoring the quality of care in nursing homes, adult care homes, assisted living facilities and home health care programs.

Long-Term Care Services Data

S.L. 2000-67, Sec. 11.4 (HB 1840) requires the Department of Health and Human Services (DHHS), in conjunction with the Institute of Medicine, by January 1, 2002 to:

- Identify screening, level of services and care planning instruments to be used by all DHHS long-term care services.
- Develop a timeline for testing and implementing these instruments.
- Compile county level data on the number of people 18 years or older who use DHHS long-term care services and expenditures by Division and type of program.

This section also extends by one year the deadline DHHS was provided under S.L. 1999-237, Sec. 11.7A(a) to work with local agencies, consumer and provider organizations, and other State agencies to develop a delivery system to provide a continuum of long-term services for the elderly and disabled and their families. The new deadline is January 1, 2002.

Extend Adult Care Home Study

S.L. 2000-67, Sec. 11.9(b) (HB 1840) requires the Department of Health and Human Services (DHHS) to study adult care home residents, recommend licensure categories appropriate to the various populations being served, and identify current funding sources available to residents of adult care homes. DHHS is to report no later than March 1, 2001 to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources.

Adult Care Homes Reimbursement Rate Increase/State Auditor Study

S.L. 2000-67, Sec. 11.12(b) (HB 1840) requires the Office of State Auditor to study the cost reimbursement system for residents receiving adult care home reimbursement assistance. The study shall include an analysis of:

- The financial data collected on the adult care homes by the Department of Health and Human Services controller's office.
- The impact of occupancy rates on the cost reimbursement system.

The State Auditor shall report the study results to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources not later than March 1, 2001.

This section became effective July 1, 2000.

Referrals to Existing Commissions/Committees

Study Multi-unit Assisted Housing with Services Facilities

S.L. 2000-67, Sec. 11.11 (HB 1840) requires the North Carolina Study Commission on Aging to study the following issues concerning Multi-unit Assisted Housing with Services (MAHS):

- Strategies to ensure registration of facilities as required by law.
- Whether persons requesting access to MAHS facilities should be included in the assessment process that is part of the uniform portal of entry.
- Whether an advocacy and oversight system for MAHS facilities should be developed.

The Commission shall report its findings and recommendations to the 2001 General Assembly no later than February 1, 2001.

Chapter 15
State Government

Al Andrews (AA), Cindy Avrette (CA), Erika Churchill (EC), Karen Cochrane-Brown (KCB), Frank Folger (FF), George Givens (GG), Kory Goldsmith (KG), Jeff Hudson (JH), Robin Johnson (RJ), Esther Manheimer (EM),Theresa Matula (TM) Walker Reagan (WR)

Enacted Legislation

The Hurricane Floyd Recovery Act of 1999

Assistance. S.L. 1999-463 (1999 Extra Session) (HB 2) established the Hurricane Floyd Reserve Fund to provide financial assistance to the people and areas that suffered from Hurricane Floyd. This act appropriates a total of $836 million ($836,000,000) to be used for the following types of assistance to counties declared federal disaster areas as a result of the hurricane:

- Matching federal funds for disaster relief.
- Housing assistance for homeowners and renters.
- Economic recovery assistance for businesses and the agriculture and fishing sectors of the economy.
- Assist public health, public safety, social services, and environmental recovery.
- Assist local governments.

In addition, this act authorizes the Governor, with the concurrence of the Council of State, and in compliance with the Emergency Management Act, to reallocate funds appropriated by the General Assembly for the 1999-2000 fiscal year and previous fiscal years, during a state of disaster to the Hurricane Floyd Reserve Fund, from the following areas:

- Operation and maintenance of State agencies.
- Repairs, renovations, and capital projects.
- Nonrecurring appropriations.

This act also authorizes the Governor to establish new programs and expand and modify existing programs for necessary and appropriate relief from the effects of Hurricane Floyd.

Taxation. The federal taxability of amounts paid from the Hurricane Floyd Reserve Fund to individuals and businesses varies depending on the purpose of the payment. Taxpayers will receive a Form 1099 from the State for any payments received that must be included in federal taxable income. Since North Carolina individual and corporate income tax calculations begin with federal taxable income, any amount taxable for federal income tax purposes would also be taxable for State income tax purposes. To avoid State income tax on any of the payments received by taxpayers from the Fund, the General Assembly provided that any amount paid to a taxpayer from the Fund for hurricane relief or assistance that is included in federal taxable income may be deducted when calculating State taxable income. However, money paid to a taxpayer for goods or services provided by the taxpayer, such as building supplies or cleaning up hurricane debris, would not be deductible.

The General Assembly also wanted to be certain that recipients of monies from the Hurricane Floyd Relief Fund understand the taxability of any amounts they receive. This act requires an agency that distributes funds or property from the Hurricane Floyd Reserve Fund to give the recipient a written statement of the State and federal income tax treatment of the funds or property disbursed. This section applies to taxable years beginning January 1, 1999.

Creation of Disaster Response and Recovery Commission. See **Studies**.

Personnel. This act authorizes the Governor to establish part-time and full-time personnel positions to implement this act. These positions shall be of limited duration, or time-limited, and exempt from the State Personnel Act. This section became effective December 16, 1999.

Unemployment Insurance Waiting Period. Effective September 1, 1999, G.S. 96-13(c) was amended by eliminating the one-week waiting period for eligible unemployment benefit claims filed on or

after September 5, 1999. This change allows individuals who filed for unemployment as a result of the hurricane activity to retroactively file for a waiver of the waiting period and receive payment for the first week of their unemployment. Benefits paid as a result of the waiver were not to be charged to the base period employer(s). This change also applies to claims filed as a result of any future major natural disasters, as declared by the President of the United States.

School Calendar: Effective August 15, 1999, and expiring August 15, 2000, this act amended G.S. 115C-84.2(a)(1) to allow local school administrative units located in whole or in part in the 66 counties declared to be Hurricane Floyd federal disaster areas to adopt a school calendar with a minimum of either 180 instructional days or 1000 instructional hours covering at least nine calendar months. Prior to the amendment, the school calendar was a minimum of 180 instructional days **and** 1000 hours of instruction covering at least nine calendar months.

Administrative Procedure – Rule Making. This act authorizes agencies to adopt temporary rules to implement the Hurricane Floyd Recovery Act of 1999. The adoption of temporary rules to implement the act must be in accordance with the temporary rule provisions of the Administrative Procedure Act except for the following:

- The authority to adopt temporary rules continues until the rules needed to implement this act have become effective as either temporary or permanent rules.
- A temporary rule adopted to implement this act must specify the date on which the rule will expire and the rule continues in effect until that date.

Any agency that adopts a temporary rule to implement this act must report the text of and need for the rule to the Joint Legislative Administrative Procedure Oversight Committee within 30 days of the rule's adoption. This section specifically authorizes the Department of Administration and other State agencies to adopt temporary rules to implement the North Carolina Environmental Policy Act, including the adoption of minimum criteria.

Effective date. Section 3.1(c) (Governor's authority to reallocate funds in compliance with the Emergency Management Act), Section 4 (Temporary Rulemaking under the Administrative Procedure Act), Section 4.1 (Governor's authority to establish new programs, modify and expand existing programs, and fund those programs to implement Hurricane Floyd relief), and Section 7 (Unemployment insurance waiting period) of this act became effective September 1, 1999. The tax provisions became effective for taxable years beginning January 1, 1999. The remainder of this act became effective on December 16, 1999. (TM, GG, JH, EM, CA, RJ, EC)

Retired Physician Licensure

S.L. 2000-5 (HB 1153). See **Health and Human Services.**

Raise State Tort Claims Limit

S.L. 2000-67, Secs. 7A(a)-(k) (HB 1840). See **Civil Law and Procedure.**

Authorization to Reallocate Previously Appropriated Petroleum Overcharge Funds

S.L. 2000-67, Sec. 14 (HB 1840) amends S.L. 1999-237, Sec. 16A by adding Residential Energy Conservation Assistance Program (RECAP) projects to the list of projects for which funds appropriated from the case of United States v. Exxon and from the United States Department of Energy's Stripper Well Litigation to the Department of Commerce may be reallocated.

This section became effective July 1, 2000. (WLG)

Energy Conservation Projects in State-Owned Buildings

S.L. 2000-67, Sec. 14.1 (HB 1840) directs the Department of Commerce to spend up to $1 million to implement energy conservation programs in those state-owned buildings where energy costs are the highest. The money is to come from funds previously appropriated from the case of United States v. Exxon and from the United States Department of Energy's Stripper Well Litigation.

This section became effective July 1, 2000. (WLG)

Petroleum Overcharge Funds Allocation

S.L. 2000-67, Secs. 14.2(a)-(e) (HB 1840) allocate funds from the Stripper Well Litigation Special Reserve to the following agencies in FY 2000-2001:

- $2.6 million to the Department of Commerce for the Residential Energy Conservation Assistance Program (RECAP);
- $2 million to the Housing Finance Agency for the Housing Trust Fund for residential energy-related uses, as permitted under Stripper Well Litigation; and
- $1 million to the North Carolina Community Development Initiative for residential energy-related uses as permitted under Stripper Well Litigation.

These sections became effective July 1, 2000. (EM)

Energy Division Study of Residential Energy Conservation Assistance Program

S.L. 2000-67, Secs. 14.14(a)-(c) (HB 1840) require the Energy Division of the Department of Commerce to determine the number of owner-occupied and rental houses allocated funds from the Residential Energy Conservation Assistance Program and the amount of funds allocated by county for both the 1998-1999 and the 1999-2000 fiscal years. The Division must report its findings to the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division by January 15, 2001.

These sections became effective July 1, 2000. (TG)

Cap on Residential Energy Conservation Assistance Program Spending

S.L. 2000-67, Sec. 14.15 (HB 1840) limits to $8,977,069 the amount the Energy Division of the Department of Commerce may spend in fiscal year 2000-2001 for weatherization activities in the Residential Energy Conservation Assistance Program. This is the same amount spent in the 1998-1999 fiscal year.

This section became effective July 1, 2000. (TG)

Transfer Energy Division from Department of Commerce to Department of Health and Human Services and Department of Administration

S.L. 2000-67, Secs. 14.18(a)-(e) (HB 1840) and S.L. 2000-140 (SB 1335) make several administrative changes to the Energy Division and the State's energy program by eliminating the Energy Division of the Department of Commerce (DOC) and transferring its functions to other departments. These provisions transfer the Residential Energy Conservation Assistance Program (RECAP) of the Energy Division from DOC to the Department of Health and Human Services (DHHS). These provisions also transfer the

Energy Council and the State Energy Efficiency Program (renamed in this act from the State Energy Conservation Plan) of the Energy Division from DOC to the Department of Administration (DOA). Both transfers are defined as Type I transfers.

S.L. 2000-140, Sec. 76 (SB 1335) makes conforming changes to the DOA statutes by recodifying the Stocks of Coal and Petroleum Fuels reporting statutes and the Business Energy Improvement Program statutes under the DOA article and makes other conforming changes to reflect name changes. No corresponding changes were made to the DHHS statutes.

As a result of these two sections, the Energy Division is eliminated as a separate division of State government.

These sections become effective September 30, 2000. (WR)

Authorize Additional Magistrates

S.L. 2000-67, Sec. 15.2 (HB 1840). See **Civil Law and Procedure.**

Additional District Court Judges

S.L. 2000-67, Secs. 15.3(a)-(c) (HB 1840). See **Civil Law and Procedure.**

Authorize Court Officials to Apply to the Director of the AOC to Enter into Contracts

S.L. 2000-67, Secs. 15.4(a)-(g) (HB 1840). See **Civil Law and Procedure.**

Additional Court of Appeals Judges

S.L. 2000-67, Sec. 15.5(a) (HB 1840). See **Civil Law and Procedure.**

Additional Superior Court Judges

S.L. 2000-67, Secs. 15.6(a)-(c) (HB 1840). See **Civil Law and Procedure.**

Reduce Special Superior Court Judgeships/Extend Term of Special Superior Court Judge

S.L. 2000-67, Secs. 15.8(a)-(b) (HB 1840). See **Civil Law and Procedure.**

Ban Private Prisons Housing Out-of-State Inmates

S.L. 2000-67, Sec. 16.3 (HB 1840). See **Criminal Law and Procedure.**

Lea Island Natural Area/State Property

S.L. 2000-102 (HB 1617). See **Environment and Natural Resources.**

Safety Professionals

S.L. 2000-110, as amended by S.L. 2000-140, Sec. 98 (SB 897, as amended by SB 1335). See **Health and Human Services.**

Engineers/Land Surveyors Licensure

S.L. 2000-115 (SB 1316) provides that an applicant for a land surveyors license who has failed the exam three times must present evidence that the applicant has taken actions to enhance his/her chances of passing the exam prior to reexamination. This act also changes the license expiration date for businesses from December 31 to June 30. The Board of Examiners for Engineers and Land Surveyors is authorized to establish rules regulating the operation of offices and places of business licensed by the State in order to ensure that professional services are performed under the supervision of licensed professional engineers and land surveyors.

This act became effective July 14, 2000. (KG)

Manufactured Housing Board Amendments

S.L. 2000-122, Secs. 8-9 (HB 1699) raise the surety bond amounts for manufactured home dealers and set-up contractors. Also, manufactured housing licensees (except salespersons) must notify the Manufactured Housing Board of any change in ownership or control of the licensee's business and of any federal bankruptcy or State receivership proceedings commenced against the licensee.

These sections became effective September 1, 2000. (KG)

Modernize Bail Bond Forfeitures

S.L. 2000-133 (HB 1607) amends existing bail bond forfeiture laws. Several definitions are added and the term "obligor" is deleted. The word "defendant" is substituted for the outdated term "principal." Notice of the entry of a bail bond forfeiture must now be mailed not only to each defendant but to each surety named on the bail bond and to each bail agent representing an insurance company serving as a surety on the bond.

This act provides that after entry of a bail bond forfeiture and proper notice to all parties, there is a 150-day window during which a defendant or any surety on a bail bond may make a motion to set aside the forfeiture for at least one of six specific reasons. If there is no motion or if the motion fails, the forfeiture becomes a final judgment of forfeiture on the 150th day following notice. A court may only grant relief from a final judgment of forfeiture if the party seeking relief was not given proper statutory notice or for other extraordinary circumstances. The period for obtaining relief is limited to three years from the date that the forfeiture judgment became final.

This act also provides that when a defendant is presented to a magistrate after having breached a condition of an existing bail bond, as a new condition of pretrial release, the magistrate shall require at least a doubling of the amount of the bail bond. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required under a prior release order. A surety or bail agent who signs a bond knowing that the defendant has already failed to appear at least twice on the charges is denied the relief of having a bail forfeiture later set aside for any reason.

This act becomes effective January 1, 2001 and applies to all bail bonds executed and all forfeiture proceedings initiated on or after that date. (AA)

Establish Juvenile Department

S.L. 2000-137 (HB 1804) transfers existing functions of the Office of Juvenile Justice in the Office of the Governor to a new Department of Juvenile Justice and Delinquency Prevention. This act also makes technical and conforming changes to the Juvenile Code and other statutes.

This act became effective July 1, 2000. (EM)

1898 Wilmington Race Riot Commission

S.L. 2000-138, Secs. 17.1-17.2 (SB 787) create the 1898 Wilmington Race Riot Commission (Commission) located in the Department of Cultural Resources. The Commission is directed to develop a historical record of the 1898 Wilmington Race Riot by gathering information such as oral testimony from descendants of those affected by the riot and others, and by accurately identifying information having historical significance to the riot. The Commission shall consist of 13 members appointed as follows:

- Three by the President Pro Tempore of the Senate.
- Three by the Speaker of the House.
- Three by the Governor.
- Two by the Mayor and City Council of the City of Wilmington.
- Two by the New Hanover County Commissioners.

The Commission shall have two cochairs appointed by the President Pro Tempore of the Senate and the Speaker of the House. The Commission shall meet at least quarterly, and must submit a final report to the General Assembly by December 31, 2002. The final report may include suggestions for a permanent marker or memorial of the riot and whether to designate the event as a historic site.

These sections became effective July 21, 2000. (KG)

Auctioneer Licensing Amendments

S.L. 2000-140, Sec. 59 (SB 1335) clarifies that an applicant for licensure as an auctioneer, apprentice auctioneer, or auction firm are required to submit to a criminal background check. The Department of Justice is granted the authority to conduct the background check.

This section became effective July 21, 2000. (EC)

Exemption from Massage and Bodywork Therapy Practice Act

S.L. 2000-140, Sec. 93 (SB 1335) adds a new exemption to the licensing requirements under the Massage and Body Work Therapy Practice Act. Effective July 21, 2000, persons employed by or contracting with a not-for-profit community service organization to perform massage and bodywork therapy on persons who are members of the not-for-profit community service organization, and are of the same gender as the person giving the massage or bodywork therapy, are exempt from licensure. (KG)

Indigent Defense Services

S.L. 2000-144 (SB 1323). This act does the following:

Office of Indigent Defense Services. This act establishes the Office of Indigent Defense Services (Office) within the Judicial Department. The Office is responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in cases in which an indigent person is entitled to representation.

Commission on Indigent Defense Services. This act also establishes the Commission on Indigent Defense Services (Commission). The Commission consists of 13 appointees who are required to have significant experience in the defense of criminal or other cases subject to this act or have demonstrated a strong commitment to quality representation in indigent defense matters.

Public Defender Offices. This act organizes 11 defender districts across the State, establishes a public defender's office in each defender district, and authorizes the Commission to recommend to the General Assembly that a district or regional public office be established. This act sets qualifications, term lengths, and salary increase schedules for public defenders and assistant public defenders.

Appellate Defender. This act establishes an appellate defender, appointed by the Commission, for a four-year term. The Commission is directed to adopt rules implementing provisions for the appellate defender.

Reporting Requirements. The Commission must report on or before May 1, 2001 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. The report must include: a plan for the orderly transfer of budget and related authority from the Administrative Office of the Courts to the Commission effective July 1, 2001; rules, standards, and other regulations developed by the Commission for delivery of indigent defense services; and other matters for implementing this act.

Effective Dates. Provisions of this act governing the establishment of the Office and Commission and position of Director and responsibilities of the Commission became effective August 2, 2000. No rules, regulations, or standards issued by the Commission or decisions on the actual delivery of services may take effect prior to July 1, 2001. The Director of the Administrative Office of the Courts maintains authority over expenditure of funds until July 1, 2001. The Commission becomes responsible for expenditure of funds for all cases pending on or after July 1, 2001. The remaining provisions of this act become effective July 1, 2001. (FF)

Rural Redevelopment Authority

S.L. 2000-148 (HB 1819) creates the Rural Redevelopment Authority (RRA) to administer the financing of rural economic development projects and to invest in rural business development. The RRA is a body corporate and politic, and a State agency created to perform essential governmental and public functions. It is located in the Department of Commerce, but exercises its powers independently of the Secretary of Commerce. The Board of Directors is composed of 11 members, appointed as follows:

- Three by the Governor – two must be representatives of financial institutions, one must be an elected official representing a local government in a rural county.
- Three by the House upon the recommendation of the Speaker – one must be a representative of a predominantly rural regional partnership and one must be representative of a financial institution.
- Three by the Senate upon the recommendation of the President Pro Tempore – both must be representatives of financial institutions.
- The Secretary of Commerce.
- The chief executive officer of the Authority.

Members serve three-year terms except the chief executive officer's term coincides with his or her appointment by the Board. The Governor appoints one of the members as the Chair, and the Board elects a Vice-Chair.

This act creates the Rural Investment Fund to be used to make intermediate-term loans to government and private, nonprofit entities for self-liquidating projects. This act also creates the Long-Term Rural Development Fund. The RRA shall invest the assets of the Development Fund and use the income from those investments to pay the Fund's administrative expenses, to make intermediate and long-term loans, and to acquire property and develop it for industrial sites. The RRA establishes the terms of the loans from both Funds and must give priority to applications from regional partnerships. The RRA must make annual and quarterly reports to the General Assembly. The RRA is granted authority to adopt temporary rules that shall expire July 1, 2002. The RRA and its lessees are exempted from the Umstead Act, which prohibits State agencies from competing with the private sector.

This act became effective July 1, 2000. (KG)

Adverse Weather Court Closings

S.L. 2000-166 (HB 1502). See **Civil Law and Procedure.**

Register of Deeds Fee Adjustment

S.L. 2000-167 (SB 1529). See **Taxation.**

Pest Control Committee Members

S.L. 2000-175 (SB 1082). See **Agriculture.**

Pro Tem/Speaker Appointments–Statutory and Session Law Changes

S.L. 2000-181, Secs. 2.1-2.7(b) (SB 1385) make a number of changes to statutory and session laws.

- The membership of the Study Commission on the Future of Electric Services in North Carolina is increased from 29 to 30 members. The new member shall be the Chief Executive Officer of North Carolina Power Company or the CEO's designee.
- The membership of the North Carolina Tax Policy Commission is increased from 15 to 17. The Speaker of the House and the President Pro Tempore each appoints six members (had been five) and three shall be members of the General Assembly (had been two). The appointments must be made no later then August 31, 3000.
- The membership of the Private Protective Services Board is increased from 10 to 14 members. The Speaker of the House and the President Pro Tempore each appoint five members (had been three).
- The Roanoke Island Commission shall make its recommendations by March 15 of each year (had been September 15 of each year) that terms expire for appointments for terms commencing on July 1 of that year (had been November 1).
- The membership of the Centennial Authority Board membership is increased from 17 to 19 members. The mayors of all the cities in Wake County will appoint two members (had been one), and the Chancellor of North Carolina State University or the Chancellor's designee is also added as a member.
- The terms of two individuals serving on the North Carolina Real Estate Commission are extended from June 30, 2002 to July 31, 2002.
- The number of members of the State Board of Chiropractic Examiners who must be practicing doctors of chiropractic is reduced from seven to six.

These sections became effective August 2, 2000 and appointments made under this act commenced July 1, 2000. (KG)

Amend Contested Case Procedure

S.L. 2000-190 (HB 968) amends the Administrative Procedure Act to strengthen the weight which must be given to the decisions of administrative law judges (ALJ) by agencies when making final decisions. The ALJ must give due regard to the demonstrated knowledge and expertise of the agency and must determine the facts by a preponderance of the evidence. Although agencies will continue to make final decisions, they must meet a higher standard to reject an ALJ's decision. The agency must adopt the ALJ's decision unless the agency demonstrates that the decision is clearly contrary to the preponderance of the admissible evidence in the record. In addition, the agency may not reject, substitute, or make new

findings of fact unless it specifically states the reason for not adopting the ALJ's finding of fact and cites the evidence in the record on which it relied.

This act also authorizes ALJ's to grant motions for judgment on the pleadings or summary judgment. These decisions, like others, will be returned to the agency for a final decision. If the agency rejects the decision granting the motion, it may remand the case to the ALJ for a hearing. However, this interlocutory decision can be immediately appealed to Superior Court.

This act modifies the scope and standard of judicial review to reflect the higher standard to which agencies will be held when they reject ALJ decisions. If the agency rejects the ALJ's decision, the court shall review the record, de novo, and make its own findings of fact and conclusions of law. The court shall not give deference to any prior decision in the case nor shall it be bound by the agency's findings of fact or conclusions of law, but shall determine whether the petitioner is entitled to the relief sought in the petition. The court may also review decisions on motions for judgment on the pleading and summary judgment and can enter any order allowed in a civil action under the Rules of Civil Procedure.

This new procedure for the hearing and adjudication of contested cases does not apply to cases involving Certificates of Need. These cases will continue to receive a recommended decision from the ALJ and a final decision from the agency, under the same standard as currently applies. These cases will also continue to be reviewed by the Court of Appeals. In addition, cases involving local governmental employees who are subject to the State Personnel Act are not affected by this act. These cases will continue to be decided and reviewed under current law.

This act also authorizes ALJs to award attorney's fees in certain cases under the State Personnel Act, and the courts to award attorney's fees for administrative hearings. ALJs will also be made subject to the Model Code of Judicial Conduct for State Administrative Law Judges. Failure to comply with the Code may constitute just cause for disciplinary action and removal from office. This act also shortens the time limits within which agencies must make final decisions. Finally, this act adds a new provision, which assigns the burden of proof in just cause employment cases under the State Personnel Act to the department or agency employer rather than the disciplined employee.

This act becomes effective January 1, 2001, and applies to contested cases commenced on or after that date. (KCB)

Studies

Referrals to Existing Commissions/Committees

The Hurricane Floyd Recovery Act of 1999

Creation of Disaster Response and Recovery Commission. S.L. 1999-463, Secs. 5(a)-(i) (1999 Extra Session) (HB 2) establish the Legislative Commission to Address Hurricane Floyd Disaster Relief (Commission). The 21 member Commission includes seven members appointed by Governor, seven members appointed by the Speaker of the House, and seven members appointed by the President Pro Tempore. The President Pro Tempore and the Speaker of the House each designated a cochair. The Commission is required to hold meetings around the State and to study the following topics:

- The adequacy of the State's response to natural disasters under current law and necessary modifications in the State's response to future disasters.
- Recovery efforts for Eastern North Carolina in response to Hurricane Floyd and strategies for enhancing those efforts.
- The causes of the flooding and the extent to which each cause contributed to catastrophic flood damage.

The Commission must develop a process for citizen participation so as to inform citizens of the Commission's work and allow citizens to contribute to the work of the Commission. The Commission must submit interim reports to the 2000 Regular Session and the 2001 Session, and the final report must be submitted on May 1, 2002. The Commission terminates upon the filing of its final report.

State-Supported Science/Technology Recommendations/Study

S.L. 2000-67, Secs. 7.3(a)-(e) (HB 1840) authorize the Legislative Research Commission (LRC) to study issues related to State funding and in-kind support of scientific or technological development activity by non-State entities, including whether there has been adequate provision for reimbursement of those expenses or a sharing by the State in any returns on those activities. The focus of the study is to develop a policy to ensure that the State would share in any gain on scientific and technological development activities in return for the investment provided by the State. The LRC is further directed to study the question of whether the State should provide funding or in-kind support for scientific or technological development activities of non-State entities only as a contractual agreement, with conditions that would require reimbursement for support of any product that is transferred or marketed for profit, and that would agree to provide the State a share in the future profits generated by a State-supported scientific or technological development. The LRC is authorized to consult with UNC and the State Community Colleges System regarding policy and practices relative to licensing and royalty arrangements. The LRC is directed to report its recommendations to the 2001 Session of the General Assembly. (BC)

Legislative Ethics Committee

S.L. 2000-138, Sec. 12.1 (SB 787) authorizes the Legislative Ethics Committee to study the need for and advisability of establishing conflicts of interest guidelines for public members of advisory committees and commissions in the executive and legislative branches of State government. Any recommended legislation is to include recommended guidelines or a procedure for the establishment of conflicts of interest guidelines. The Legislative Ethics Committee shall report its findings and recommendations, including proposed legislation, to the 2001 General Assembly upon its convening. (WR)

Chapter 16
Taxation

Cindy Avrette (CA), Mary Shuping (MS)

Enacted Legislation

The Hurricane Floyd Recovery Act of 1999

S.L. 1999-463 (1999 Extra Session) (HB 2). See **State Government.**

Reform Local Tax on Rental Cars

S.L. 2000-2 (SB 1076), as amended by S.L. 2000-140 (SB 1335), exempts from property tax a vehicle that is offered at retail for short-term lease or rental, if the vehicle is owned or leased by an entity engaged in the business of leasing vehicles to the general public for short-term lease or rental. "Short-term lease or rental" means a lease or rental for less than 365 continuous days.

The repeal of this property tax is effective for taxes imposed for taxable years beginning on or after July 1, 2000. This tax revenue is replaced with a local option gross receipts tax on short-term rentals or leases. Effective July 1, 2000, a county or city may levy a gross receipt tax at a rate not to exceed 1.5% on the gross receipts derived from the short-term lease or rental of vehicles at retail to the general public. (CA)

Bonds for Higher Education

S.L. 2000-3 (SB 912), known as the Michael K. Hooker Higher Education Facilities Finance Act, creates a new Chapter 116D of the General Statutes to establish the following mechanisms for debt financing of higher education facilities:

- Authorizes the State to issue general obligation bonds to finance $2.5 billion of capital facilities for the University of North Carolina and $600 million of capital facilities for community colleges. The bonds are subject to approval by the voters in the November 2000 statewide general election.
- Authorizes the UNC Board of Governors to issue special obligation bonds to finance capital facilities for the University. The bonds will be secured by the University's receipts, other than tuition or appropriations from the General Fund.

This act became effective May 25, 2000. (CA)

Excise Tax on Timber Contracts

S.L. 2000-16 (HB 1545) clarifies that the excise tax on instruments conveying an interest in real property applies to timber deeds and contracts for the sale of standing timber. For purposes of Article 8E, Excise Tax on Conveyances, the timber will be treated as if it were real property. This act remedies any confusion resulting from court decisions regarding the treatment of timber deeds and contracts for the sale of standing timber.

This act became effective July 1, 2000. (CA)

Exempt Disabled Veteran Vehicles

S.L. 2000-18 (HB 133) exempts from property tax motor vehicles that are owned by veterans with certain service-related disabilities and that have been modified with special equipment to accommodate the service-related disability.

This act became effective July 1, 2000. (MS)

Dry-Cleaning Solvent Clean-up Act Amendments

S.L. 2000-19 (HB 1326). See **Environment and Natural Resources.**

Health Care Facility/CCRC Tax Exempt

S.L. 2000-20 (HB 1573) provides that the current property tax exemption for continuing care retirement centers (CCRC) will remain in effect for one more year by extending the exemption's expiration date from July 1, 2000 to July 1, 2001. In 1998, the court ruled that the property tax exemption for CCRCs was unconstitutional. The General Assembly revised the exemption so that the CCRCs that received the exemption prior to 1998 would continue to receive it until July 1, 2000. The Revenue Laws Study Committee appointed a subcommittee consisting of representatives of the CCRCs, the counties, the tax assessors, and others to review the tax status of the CCRCs and to seek a compromise. The subcommittee recommended extension of the expiration date on the property tax exemption for one year in order to give all interested parties more time to seek a compromise.

This act also clarifies the property tax exemption for health care facilities financed with bonds or notes issued by the Medical Care Commission in two ways:

- The amount of the exemption cannot exceed the lesser of the principal amount of the bonds or notes or the assessed value of the facility.
- Only the part of a health care facility financed by bonds or notes issued by the Medical Care Commission is exempt from property tax. When such bonds or notes are used to finance an expansion or a renovation of an existing facility, only the new part of the facility or the renovated part of the facility may be exempt from property tax, not the entire facility.

This provision becomes effective October 1, 2000 and applies to bonds and notes issued on or after that date. (CA)

Modify Bill Lee Act

S.L. 2000-56 (HB 1560) makes the following changes to the William S. Lee Act:

Application Fee Exemptions. This provision becomes effective January 1, 2001 and applies to applications made on or after that date. This provision:

- Exempts taxpayers applying for certification for a tax credit in a development zone from the $500 per credit application fee.
- Clarifies that there is no application fee associated with the application filed with the Department of Revenue concerning the credit for a development zone project.

Extend Credit Carry-Forwards. This provision became effective for taxable years beginning on or after January 1, 2000. This provision provides an enhanced carry-forward of ten years for a taxpayer who certifies that it will purchase or lease, and place in service within two years, at least $50,000,000 worth of real property, machinery and equipment, or central office or aircraft facility property. The general Bill Lee Act carry-forward is five years.

Require Wage Standard for Grants. This provision became effective July 1, 2000 and applies to funds appropriated, grants awarded, or loans made on or after that date. This provision requires a business seeking a grant from the Industrial Recruitment Competitive Fund to meet the Bill Lee Act wage standard

and requires a local government seeking a loan or grant from the Industrial Development Fund to meet the Bill Lee Act wage standard.

Prohibit Funding for Defaulting Grantees. This provision became effective July 1, 2000 and applies to funds appropriated, grants awarded, or loans made on or after that date. This provision prohibits the Department of Commerce from making a loan or awarding a grant to a person who is currently in default on any loan made by the Department.

Aircraft Maintenance Facility Credit. This provision becomes effective for taxable years beginning on or after January 1, 2001. This provision allows an auxiliary subdivision of an interstate passenger air carrier engaged primarily in aircraft maintenance and repair services or aircraft rebuilding to qualify for the Bill Lee Act tax credits.

Employee Buyout Incentive. This provision became effective May 1, 1999 and applies to acquisitions made on or after that date and revises the test for what constitutes an acquisition of a business by an employee buyout. An existing business that is acquired through an employee buyout is able to qualify for the Bill Lee Act credits to the same extent as a new business.

Low-Income Housing Credit Changes. This provision becomes effective for taxable years beginning on or after January 1, 2001. Last session the General Assembly enacted a new tax credit for rehabilitating or constructing low-income housing. The credit is equal to a percentage of the amount of the taxpayer's federal credit for low-income housing with respect to eligible North Carolina low-income housing. The credit must be taken over a five-year period. The credit amount enacted last year varied depending on the location of the housing. The credit is 75% for buildings located in tier one or two and 25% for buildings located in other tiers.

This provision allows the larger 75% credit for buildings located in a county that has been designated as having sustained severe or moderate damage from a hurricane or a hurricane-related disaster, regardless of what tier it is located in. It also clarifies that a building that fails to meet the eligibility requirements for the State credit during the five-year installments of the credit forfeits the remaining installments.

Modify Credit and Expiration Provisions. This provision became effective for taxable years beginning on or after January 1, 2000. This provision:

- Modifies the jobs tax credit to allow a taxpayer to claim a tax credit for creating a full-time job when it has five full-time employees regardless of how many weeks those employees work during the taxable year.
- Corrects a provision in the tax credit for investing in machinery and equipment that penalizes a taxpayer for replacing recently acquired equipment with new equipment.
- Clarifies that a taxpayer loses any remaining installments on tax credits claimed under the Bill Lee Act if the taxpayer ceases to engage in an eligible business.

Technical Correction. This provision became effective May 1, 1999 and applies to taxes paid on or after that date. This provision clarifies that an insurance company qualifies for a sales tax refund on certain purchases if it is operated for the exclusive purpose of providing insurance products to public institutions and their employees. (CA)

Qualified Zone Academy Bond Act

S.L. 2000-69 (HB 1539) authorizes the State Board of Education to administer selection and monitoring provisions of federal legislation that allows counties to issue Qualified Zone Academy Bonds (QZABs) on behalf of eligible public schools. QZABs are a relatively new financing tool that can be used by eligible public schools for renovation and repair projects, new equipment and up-to-date technology. Under current law, they cannot be used for new construction. Congress enacted the QZAB program in 1997. Under the QZAB program, bondholders (banks, insurance companies, and other financial institutions) receive a federal income tax credit in lieu of a cash interest payment. This means that local governments may borrow money under the QZAB program at a zero interest rate. Congress allocated $400 million in QZABs to the states in 1998, 1999, and 2000. An additional $400 million will be allocated in 2001. Each state has a specified allotment, which is based on the number of individuals with incomes

below the poverty level. Each state is responsible for administering the QZAB program. Currently, North Carolina does not have a process for administering the program. This act authorizes the State Board of Education to administer a program to identify eligible schools, set up an application process, select one or more schools each year, and confirm that the bonds are issued in accordance with the federal restrictions.

This act became effective June 30, 2000. (CA)

Storm Water Utility Fees

S.L. 2000-70 (HB 1602). See **Environment and Natural Resources**.

Charter School Fuel Exemption

S.L. 2000-72 (HB 1302) adds "motor fuel sold to a charter school for use for charter school purposes" to the list of motor fuel tax exemptions. To enable the Department of Revenue (Department) to administer the tax exemption and to verify the existence of the applicant for the exemption, this act requires the State Board of Education to direct the Department of Public Instruction to notify the Department when the State Board of Education terminates, fails to renew, or grants a charter for a charter school.

This act becomes effective October 1, 2000. (MS)

Amend Bill Lee Act Tier Designations

S.L. 2000-73 (SB 1318). In 1997, the General Assembly amended the Bill Lee Act to guarantee that a county that obtained a tier one status could not lose that status for two years regardless of what the annual rankings would otherwise require. This act extends this guarantee to a county designated as a tier two area, so that a tier two area may not be redesignated as a higher-numbered tier area until it has been a tier two area for two consecutive years.

This act became effective June 30, 2000 and applies retroactively to tier designations for the year 2000 and later calendar years. (MS)

Butner Water and Sewer Bonds

S.L. 2000-81 (HB 1629) allows for the authorization of the issuance of $40 million of revenue bonds for the purpose of financing improvements to the water supply and distribution system and the sewer collection and disposal system serving the Community of Butner and the Camp Butner reservation. Under this act, the State Treasurer must submit an application to the Local Government Commission for approval of the bond issue. In determining whether the bond issuance should be approved, the Commission must find all of the following:

- The proposed revenue bond issue is necessary.
- The amount proposed is adequate and not excessive.
- The proposed project is feasible.
- The net revenues of the project to be financed will be sufficient to service the proposed revenue bonds.
- The bonds can be marketed at a reasonable interest cost.

If the Commission approves the application for the issuance of the revenue bonds, the Council of State may adopt a revenue bond order. In determining the details of the revenue bonds, the State is subject to the same restrictions as are local governments under The State and Local Revenue Bond Act. The Local Government Commission will sell the bonds.

This act became effective July 5, 2000. (MS)

2000 Fee Bill

S.L. 2000-109 (HB 1854) sets the various fee amounts as detailed below.

Public Utility Regulatory Fee. This provision became effective July 1, 2000 and maintains the public utility regulatory fee for fiscal year 2000-2001 at 0.09%. The rate must be set by statute each year. The fee rate has not increased since fiscal year 1997-98. The utility regulatory fee was imposed in 1989. Its purpose is to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

North Carolina Electric Membership Corporation Regulatory Fee. This provision became effective July 1, 2000 and sets the public utility regulatory fee to be paid by The North Carolina Electric Membership Corporation for the 2000-2001 fiscal year at $200,000. This fee amount must be set by statute each year. The fee was first imposed last year. The amount of the fee remains the same.

Electric membership corporations are authorized under current law to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiaries must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business. The purpose of this fee is to pay for the cost of this regulation.

Insurance Regulatory Charge. This provision became effective July 5, 2000 and maintains the insurance regulatory charge at its current 7% rate for the calendar year 2000. The charge is paid at the same time insurers pay their premium taxes. The charge was first imposed in 1991. Its purpose is to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of the Department. Effective for the 2000 calendar year, the regulatory fee will be imposed not only on insurance companies that pay the gross premiums tax but also on service corporations, such as Blue Cross Blue Shield and Delta Dental Corporation, and health maintenance organizations. For insurance companies that pay the gross premiums tax, the fee is a percentage of the premiums tax owed the State. For HMOs and medical corporations, the fee will be levied on an imaginary amount of dollars the HMOs and medical corporations would owe if they paid the gross premiums tax at the 1.9% rate like other insurers. HMOs do not pay the gross premiums tax. Medical corporations pay the gross premiums tax at a rate of one-half of one percent (0.5%).

Increase Court Costs. This provision increases the following criminal and civil court costs. The revenues generated by these fees are credited to the General Fund. This provision became effective July 15, 2000.

Court Cost	Previous Amount	New Amount
Criminal actions – district court and magistrate	$61.00	$65.00
Criminal actions – superior court	$68.00	$72.00
Civil actions – magistrate	$28.00	$33.00
Civil actions – district court	$40.00	$44.00
Civil actions – superior court	$55.00	$59.00
Special proceedings in superior court	$26.00	$30.00
Administration of estates	$26.00	$30.00
Administration of estates – minimum fee	$10.00	$15.00
Administration of estates – annual and final accounts	$15.00	$20.00
Administration of estates – probate will without qualification of a personal representative	$17.00	$20.00
Foreclosures	$30.00	$40.00

Jail Fees For Local Governments. This provision becomes effective October 1, 2000 and increases the amount a person who is ordered to pay jail fees pursuant to a probationary sentence must pay the county or municipality from $5 a day to the amount the Department of Correction must pay to local jails for the cost of maintaining a prisoner, who committed a misdemeanor, for 30 to 90 days. The per diem rate the Department of Correction must reimburse local jails is set each year by the General Assembly in its appropriations acts. The per diem rate for fiscal year 1999-2000 is $18 a day. The increased fee amount becomes effective July 1, 2000 and applies to sentences or portions of sentences being served on or after that date.

Increase Fee For Emergency Planning. This provision became effective July 1, 2000 and increases the annual fee that a person who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity must pay from $18,000 to $36,000. The fee is payable for each fixed nuclear facility that is located within the State or has Plume Exposure Pathway Emergency Planning Zone of which any part is located in this State. The fee is payable to the Department of Crime Control and Public Safety for the use of the Division of Radiation Protection of the Department of Environment and Natural Resources. The fee is applied to the costs of planning and implementing the emergency response activities required by the Federal Emergency Management Agency for the operation of nuclear facilities. The current fee generates one-half of the program's costs. The increased fee will generate enough revenue to fully fund the program. The fee must be paid by July 31 of each year.

Oversize Load Permits And Penalties. This provision (changes permit fees) becomes effective October 1, 2000 and all other changes became effective July 5, 2000. These provisions revise the fees for oversize or overweight load permits imposed by the Division of Motor Vehicles and revise and increase the penalties for oversize loads. The revised permit fees:

- Increases the fee for a single trip permit for an oversize or overweight vehicle from $10 to $12.
- If the vehicle weighs over 132,000 pounds, there is an additional surcharge of $3 for each 1,000 pounds over 132,000 pounds.
- Establishes annual permit fee of $200 to move house trailers and a $100 fee to move other commodities.
- Establishes a nonrefundable fee of $100 for permits for which an engineering study of the move's impact is required.

The revised penalties for oversize loads:

- Allows the Department of Transportation (DOT) to assess a separate civil penalty against a vehicle's registered owner as follows:
  (1) $500 for operating without a special permit for an oversize or overweight vehicle, for moving a load off the route specified in the permit, for falsifying information to obtain a permit, for failing to comply with the permit's dimensional restrictions, or for failing to comply with escort vehicle requirements. DOT can refuse to issue additional permits if the registered owner commits repeated violations of these offenses.
  (2) $250 for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for violating travel restrictions. DOT can refuse to issue additional permits if the registered owner commits repeated violations of these offenses.
  (3) $100 for any other violation of overweight or oversize permit conditions or requirements.
- Establishes a Class 2 misdemeanor if the driver of a commercial vehicle, carrying a load subject to oversize or overweight permits, drives at a speed in excess of 15 mph either over the posted speed or the restricted speed set out in the permit or drives the vehicle recklessly or without due caution and circumspection. This act makes these misdemeanors a "serious violation" for purposes of disqualifying a person from driving a commercial vehicle, and assigns six points to the driver's record for committing any of these offenses.

Finally, this act directs DOT, by December 1, 2002, to review and compare the revenue generated by the permit fees and the cost of administering the program and report to the Joint Legislative Transportation Oversight Committee. (See also **Studies** in **Transportation**.)

Fees For Access To Agency Services Through Electronic And Digital Transactions. This provision became effective July 5, 2000 and authorizes public agencies to determine which of its services shall be made available to the public through electronic means, including the Internet, and to charge a fee to cover the cost of the electronic transactions. Any fee must be approved by the Information Resource Management Commission, in consultation with the Joint Legislative Commission on Governmental Operations.

White Goods Sunset Repeal. This provision became effective July 5, 2000 and repeals the sunset on the white goods tax and directs the Department of Environment and Natural Resources to study issues related to the scrap tire disposal tax and the white goods disposal tax. (See also **Environment and Natural Resources.**) Under current law the tax sunsets July 1, 2001. (MS)

Tax Enforcement

S.L. 2000-119 (HB 1551) makes the following changes to the law to facilitate enforcement of the tax laws:

- Expands the offenses revenue law enforcement officers may enforce to include misdemeanor offenses as well as felony offenses. This provision became effective July 14, 2000.
- Authorizes the Secretary of Revenue to administer the oath of office to revenue law enforcement officers. This provision became effective July 14, 2000.
- Creates a civil penalty for filing a frivolous income tax return. A frivolous return is one that meets both of the following conditions: It does not include information on which the substantial correctness of the return may be judged or contains information that indicates that the return is substantially incorrect. And it evidences an intention to delay, impede, or negate the revenue laws of this State or purports to adopt a position that is lacking in seriousness. The penalty for filing a frivolous return not to exceed $500. This provision becomes effective October 1, 2000 and applies to returns filed on or after that date.
- Streamlines the procedure State and local law enforcement agencies must use to report arrests made for the failure to pay tax on unauthorized substances by allowing them to give the information directly to the Department of Revenue. This provision becomes effective December 1, 2000 and applies to arrests or seizures occurring on or after that date. (CA)

Streamlined Sales Tax System

S.L. 2000-120 (HB 1624) makes the following changes to the State's sales and use tax collections in several ways. Except as otherwise noted, this act became effective July 14, 2000. This act:

- Makes statutory changes necessary to implement the streamlined sales tax collection system recommended by the National Governors' Association. The streamlined sales tax collection system provides a simplified collection process that allows participating retailers to use a computer software program to calculate the amount of tax due to the State on a purchase based upon the customer's ship-to address. The administration of the program is the responsibility of a person certified by a state to collect its taxes, not the retailer. North Carolina is one of four states that are testing the system. The other states are Kansas, Michigan, and Wisconsin.
- Effective January 1, 2003, this act repeals the line on the individual income tax return for use tax owed.
- Provides that a remote seller who does not agree to collect the State's use tax may not use the State's courts to collect debts owed to it by a purchaser of its product in this State.
- Allows the Department of Revenue to exchange information concerning a taxpayer's social security number with the Division of Motor Vehicles when it is necessary to identify a taxpayer.
- Provides the Department of Revenue with the resources to continue its collection of delinquent tax debts owed by nonresidents and foreign entities for the remainder of this biennium.

- Allows the Department of Revenue to retain the amount of money necessary from the revenues it collects from its nonresident delinquent tax debt contracts to obtain assistance in developing a performance-based contract for an automated collection system. (CA)

Conform State Tax Law with Federal Law

S.L. 2000-126 (HB 1559) makes the following changes to State tax law so that it more closely conforms to federal tax law:

- Rewrites the definition the Internal Revenue Code used in the State tax statutes to change the reference date from June 1, 1999 to January 1, 2000. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. This provision became effective July 14, 2000.
- Returns the withholding law for farmers and fishers to conformity with federal law, correcting an inadvertent change made in 1985. Federal law forgives the penalty for farmers' and fishers' late payment of estimated taxes if the final return is filed, with taxes paid in full, by March 1 following the end of the taxable year. This provision became effective July 14, 2000.
- Amends the definition of "sales" for purposes of the apportionment formula to clarify that the receipts of a multi-state corporation should only include the net gain realized from the sale or maturity of securities, not the rolled over capital or return of principal and not receipts otherwise exempt from tax. This provision became effective July 14, 2000.
- Requires withholding State income taxes on an eligible rollover distribution to the extent permitted under federal law. This provision becomes effective January 1, 2001.
- Enables the Department of Revenue to collect delinquent tax debts owed to the State through the Treasury Offset Program by providing for the imposition of a collection assistance fee. This provision became effective July 14, 2000. (CA)

Renewable Energy Manufacturing Credit

S.L. 2000-128 (HB 1473) expands the current corporate tax credit for a corporation that constructs a facility for the production of photovoltaic equipment to include the construction of a facility for the production of other types of renewable energy equipment. This act provides that the credit for costs incurred must be taken in five equal installments and extends the carry forward from five years to ten years. The cumulative amount of the credit may not exceed 50% of the tax imposed for the taxable year. This act also adjusts the share certain cities receive from the State gross receipts tax.

This act became effective for taxable years beginning on or after January 1, 2000 and sunsets the credit for costs incurred during taxable years beginning on or after January 1, 2006. (MS)

Finance New Wildlife Centers

S.L. 2000-143 (SB 1477) authorizes the State to construct and finance a new, sustainably designed, office building, and Wildlife Education Center for the Wildlife Resources Commission, to be located in Raleigh, and a new Eastern Wildlife Education Center, to be located in Currituck County. The projects would be financed with one or two installment purchase contracts under which the State would borrow up to $13.5 million for the Raleigh project and up to $4 million for the Currituck County project. Repayment of the debt would be secured by a lien on the building, land, or both.

This act became effective August 2, 2000. (CA)

Video Poker Machines Illegal

S.L. 2000-151 (SB 1542). See **Criminal Law and Procedure**.

Film Industry Incentives

S.L. 2000-153 (SB 1460) creates the Film Industry Development Account within the Department of Commerce, Division of Travel and Tourism. This Account will provide annual grants to production companies that engage in production activities in the State. The grant may not exceed 15% of the amount the production company spends for goods and services in the State during a calendar year, and the grant may not exceed $200,000 per production. This provision became effective July 1, 2000.

This act also authorizes the Department of Administration to provide that a production company will only be charged reimbursement of actual costs incurred and actual revenues lost by the State, when State buildings are made available to a production company for a production. If any State agency makes real property available to a production company for production, the same limitations on fees apply.

This act became effective August 2, 2000. (CA)

Reallocate Water Bond Funds

S.L. 2000-156 (SB 1381) S.L. 1998-132 authorized the issuance of $800 million in Clean Water Bonds, which was subsequently approved by the State's voters. This act reallocates $200 million in Clean Water Bonds proceeds from a program that makes loans to local governments for water and wastewater system upgrades to related grant programs. It also raises annual caps on awards of Supplemental and Capacity Grants administered by the Rural Economic Development Center and further limits the amount of grant funding an applicant can receive from the Clean Water Revolving Loan and Grant Fund.

This act became effective July 1, 1999. (CA)

Brownfields Tax Incentive

S.L. 2000-158 (SB 1252) allows a partial exclusion over a five-year period from property taxes for qualifying improvements made on brownfields properties. The amount of the exclusion declines from 90% during the first year after the improvement to 10% during year five.

This act became effective August 2, 2000 and applies to taxes imposed for taxable years beginning on or after July 1, 2001. (MS)

Non-hazardous Dry-Cleaning Incentive/Investment

S.L. 2000-160 (HB 1583) provides a tax credit for commercial dry-cleaners who invest in environmentally friendly dry-cleaning equipment, effective July 1, 2001. The credit is equal to 20% of the cost of the equipment. It may be taken against corporate or individual income tax or corporate franchise tax. The tax credit may not exceed 50% of the taxpayer's tax liability in any given year and any excess over this limit may be carried forward for up to five years. The tax credit expires January 1, 2006.

This act also allows the State Treasurer to invest monies of certain enumerated special funds, such as the State Employees' Retirement funds, in obligations and securities of the North Carolina Economics Opportunities Fund.

This act became effective August 2, 2000. (CA)

Register of Deeds Fee Adjustments

S.L. 2000-167 (SB 1529) authorizes the Register of Deeds to collect a fee of $2 for providing access to the Vital Records Computer Network and to collect the actual cost of providing miscellaneous services such as faxing documents, laminating documents, or providing expedited delivery.

This act became effective October 1, 2000. (CA)

UNC Appropriated Capital/Revenue Bonds

S.L. 2000-168 (HB 1853) authorizes the construction of several projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund. It also makes technical and conforming changes to the revenue bond laws applicable to the University.

This act became effective August 2, 2000. (CA)

Refund Overpayment of Deed Stamp Tax

S.L. 2000-170 (HB 1544) provides that a taxpayer who pays more tax than is due on conveyances may request a refund of the overpayment by filing a request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid, and it must explain why the taxpayer believes a refund is due. The board of county commissioners must hold a hearing within 90 days of receiving the request. If the board determines that a refund is due, it must refund the overpayment with interest. If the board determines that a refund is not due, it must inform the taxpayer, and the taxpayer may request the Secretary of Revenue to review the decision.

This act became effective January 1, 2000. (MS)

Conduit Agency Financing

S.L. 2000-179 (SB 1472) expands statutory authority for conduit financing to "special purpose projects" through the following limited purpose agencies: County Industrial Facilities and Pollution Control Financing Authorities and the North Carolina Educational Facilities Finance Agency, which is renamed the North Carolina Capital Facilities Finance Agency to reflect its broader financing authority. In a conduit financing, a governmental entity issues bonds to finance facilities for a private party, then receives payments from the private party to service the bonds. If federal tax law permits tax-exempt bond issues for the type of facility financed, the private party is able to borrow at tax-exempt rates. Under prior law, conduit financing was limited to financing private industrial and pollution facilities through county authorities or through a State authority, and to financing private educational facilities through a State agency.

"Special purpose projects" include the following:

- water systems and facilities;
- sewage disposal systems or facilities;
- public transportation systems, facilities, or equipment;
- public parking facilities;
- public auditoriums and similar facilities;
- recreational facilities;
- solid waste facilities;
- facilities for persons with disabilities and for the disadvantaged, such as Goodwill stores and sheltered workshops, but not including retail establishments unless 75% of the inventory is used, donated goods and 75% of the employees are disadvantaged or disabled persons; and
- student housing facilities owned by entities other than educational institutions.

This act became effective July 1, 2000. (CA)

Studies
Legislative Research Commission

S.L. 2000-138, Secs. 4.1-4.3 (SB 787) authorize the Revenue Laws Study Committee to study the following tax issues and may report to the 2001 General Assembly upon its convening:

- Simplification of all State revenue and tax forms.
- Tax credits to encourage production of affordable housing.
- Establishment of an investment advisory committee to serve as a liaison between the General Assembly and the Department of State Treasurer and to assist the Treasurer in setting investment policies for the State.
- Homestead exemption.
- Simplification of taxes on telecommunications.
- Interstate tax cooperation to eliminate multiple filings by individuals.
- Positive and negative impacts of the acquisition by the State of land for conservation purposes on local government ad valorem tax revenues.
- Interstate tax agreements regarding income taxes of individuals who work across North Carolina's border from their states of residence. (CA)

Chapter 17
Technology

Brenda Carter (BC)

Enacted Legislation
State Government Services

Development and Implementation of Web Portals/Public Agency Links

S.L. 2000-67, Sec. 7.9 (HB 1840) requires the Office of Information Technology Services (ITS) to develop the architecture, requirements, and standards for developing and implementing one or more centralized Web portals that will allow 24-hour access to State government services. ITS must submit its plan for implementing the Web portals to the Information Resource Management Commission (IRMC) for the Commission's review and approval. When the plan is approved, ITS will implement the statewide Web portal system. Each State agency under IRMC review will be required to functionally link its Internet page or electronic services to the centralized Web portal system.

This section became effective July 1, 2000. (BC)

Security of Electronic Records

S.L. 2000-71 (SB 1260) amends the State's Public Records Act to protect the integrity of electronic records within the State's computer systems. It provides that a public agency is not required to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems. The protection extends to all hardware or software security, passwords, and other security standards, procedures, processes, configurations, software and codes.

This act became effective June 30, 2000. (BC)

2000 Fee Bill – Fees for Access to Agency Services through Electronic and Digital Transactions

S.L. 2000-109 (HB 1854). See **Taxation.**

Information Technology Governance

S.L. 2000-174 (HB 1578) transfers the Office of Information Technology Services (ITS) from the Department of Commerce to the Office of the Governor, as recommended by the Joint Select Committee on Information Technology.

This act provides for the transfer of information technology-related services by repealing Part 16 of Article 10 of Chapter 143B of the General Statutes and enacting Article 3D of Chapter 147. ITS will be managed and administered by the State Chief Information Officer, who will be appointed by the Governor subject to review by the Senate and House Committees on Technology. This act provides for the appointment of a Chief Deputy Information Officer and other employees to carry out the functions of the office. This act also adds the Executive Directors of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners as non-voting members to the Information Resource

Management Commission. The remainder of this act is primarily a recodification of existing law, with some clarifying and technical changes.

This act became effective September 1, 2000. (BC)

State Government Procurement Services

Electronic Procurement

S.L. 2000-67, Sec. 7.8 (HB 1840) directs the Department of Administration and the Office of the State Controller to develop electronic or digital procurement standards in a collaborative effort with the Office of Information Technology Services (ITS), the State Auditor, the State Treasurer, the UNC General Administration, the Community Colleges System Office, and the Department of Public Administration.

ITS is directed to act as an application service provider for an electronic procurement system, and to operate the system through State ownership or commercial leasing in accordance with requirements and operating standards developed by the Department of Administration, the Office of the State Controller, and ITS. The three agencies may, upon request, train other State agencies, universities, local school administrative units, and community colleges in the use of the electronic procurement system.

This section became effective July 1, 2000. (BC)

Information Technology Procurement

S.L. 2000-130 (HB 1564) makes technical and clarifying changes to the laws governing the procurement of information technology for State agencies and institutions. This act clarifies that the Office of Information Technology Services (ITS) is to procure all information technology for State agencies – including any department, institution, commission, committee, board, division, bureau, office, officer, official or other unit of the State, unless the agency is specifically exempted. The University of North Carolina and its constituent institutions may elect to participate in information technology procurement through ITS or comply with Department of Administration Purchase & Contract requirements. This act also clarifies that local governmental entities, including local school administrative units, community colleges, and other State entities, such as the UNC system and its constituent institutions, may use ITS programs and services, including procurement. Local governmental entities that use contracts established by ITS are not required to comply with otherwise applicable competitive bidding requirements.

This act adds a confidentiality provision. This provision tracks a similar provision in State purchasing and contract law that provides for the release of information regarding responses to solicitations and all information and documentation related to development of contractual documents after a contract is awarded. Every State agency that makes a direct purchase of information technology using the services of ITS is required to report directly to the Department of Administration all required information regarding the use of small contractors, minority contractors, physically handicapped contractors, and women contractors.

This act became effective July 14, 2000. (BC)

Electronic Commerce

Rural Internet Access Authority

S.L. 2000-149 (SB 1343) creates the North Carolina Rural Internet Access Authority (Authority) within the Department of Commerce to oversee statewide efforts to provide rural counties with high-speed broadband Internet access. The Authority will serve as the central rural Internet access policy planning body of the State, working with State, regional, and local agencies and with private entities to implement a coordinated rural Internet access policy.

A commission consisting of 21 members will govern the Authority. Among the Authority's goals and objectives are the following:

- Within one year, insure local dial-up Internet access is available from every telephone exchange.
- Within three years, insure high-speed Internet access is available to every citizen at rates comparable throughout the State.
- By January 1, 2002 establish two model Telework centers.
- Develop government Internet applications to facilitate citizen interaction with government agencies and services.
- Significantly increase ownership of computers, related web devices, and Internet subscriptions promoted throughout the State.

The Authority must submit quarterly reports to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations.

Each of the seven regional partnerships designated in the North Carolina Rural Redevelopment Authority Act are to study the information technology infrastructure and information technology needs of each county within its particular region. The regional partnerships may contract with the North Carolina Rural Economic Development Center as needed, and must report the results of its study to the Joint Select Committee on Information Technology not later than November 1, 2001.

This act became effective August 2, 2000 and is repealed effective December 31, 2003. (BC)

Uniform Electronic Transactions Act (UETA)

S.L. 2000-152 (SB 1266) enacts the Uniform Electronic Transactions Act (UETA), based on the model act adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999. This act also contains a number of consumer protection provisions contained in the federal "Electronic Records and Signatures in Global and National Commerce Act".

In general, UETA provides a legal framework for electronic transactions and gives electronic signatures and records the same validity and enforceability as manual signatures and paper-based transactions, without changing any of the substantive rules of law that would otherwise apply. This act will apply only to transactions in which each party has agreed to conduct the transaction electronically; it does not require parties to conduct electronic transactions. The rules of UETA are primarily for "electronic records and electronic signatures relating to a transaction". UETA sets forth four fundamental provisions:

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- Any law that requires a writing will be satisfied by an electronic record.
- Any signature requirement in the law will be met if there is an electronic signature.

This act defines the point at which information is legally sent or delivered in electronic form, and specifies the means for determining the time and place of sending and receiving. UETA provides that a signature is attributable to a person if it can be shown, in any manner, that the signature is an act of that person. If a security procedure is used, its efficacy in establishing the attribution may be shown. Nothing in UETA requires the use of a digital signature or any security procedure, so persons can use the most up-to-date digital signature technology, or they can use less sophisticated security procedures such as passwords or pin numbers. Whatever parties to a transaction use for attribution or assuring message integrity may be offered in evidence if there is a dispute.

This act provides rules on errors and changes in messages, the use of electronic signatures in the notarization and acknowledgement of documents, and the retention of records electronically in a manner that accurately reflects the record at the time it was generated and that remains accessible for later reference. UETA also validates contracts formed by electronic agents, which are computer programs that are implemented by their principals to do business in electronic form. A person may form a contract by using an electronic agent, and the principal, who is the person or entity that provides the program to do

business, is bound by the contract that its agent makes. Consequently, when a person conducts business on the Internet, that person will be assured that the agreement is valid, even though the transaction is conducted automatically by a computer that solicits orders and payment information.

Exclusions from UETA -- The provisions of this act do not apply to a transaction to the extent that the transaction is subject to the Uniform Commercial Code, although transactions governed by specified UCC provisions are covered, including sales and leases. UETA also does not apply to a transaction to the extent it is covered by laws relating to the creation and execution of wills, codicils, or testamentary trusts or the acceptance of electronic records and signatures by governmental agencies under the State's Electronic Commerce in Government Act. Thus, UETA will not apply to documents filed with, issued, or entered by a State court. In business with the State, persons may not use electronic signatures for documents requiring attestation by a notary public. Further, this act does not apply to certain notices regarding termination of utility services, foreclosures or evictions, cancellation of insurance policies, product recalls or handling of hazardous materials.

This act becomes effective October 1, 2000. (BC)

Chapter 18
Transportation

Brenda Carter (BC), Kory Goldsmith (KG), Wendy Graf (WLG), Giles Perry (GSP)

Enacted Legislation
Department of Transportation

Unpaved Road Improvement Pilot Program

S.L. 2000-67, Secs. 25.4(a)-(c) (HB 1840) direct the Department of Transportation (DOT) to use the funds appropriated from the Highway Fund for an unpaved road improvement pilot program (Program) to:

- Establish eligibility guidelines for the roads to be improved under the Program.
- Select at least one county in each of the Distribution Regions defined in G.S. 136-17.2A to be included in the Program.
- Report to the Joint Legislative Transportation Oversight Committee on the guidelines and the proposed improvements before any funds are expended.
- Provide for minimal improvements of selected roads. The Program will not address major drainage problems or the issue of bringing selected roads up to State highway system standards.
- Allows DOT to contract with private vendors to make improvements.
- Report to the Joint Legislative Transportation Oversight Committee, by December 31, 2000, on the implementation of the Program, the costs of expanding the Program statewide, the total number of eligible roads, and the costs of bringing those roads up to State highway system standards and maintaining them.

Improvements made under the Program shall not obligate the State to maintain or improve the roads in the future, and the State is not liable for any damages resulting from the improvements.

These sections became effective July 1, 2000. (WLG)

State Full Funding Grant Agreements with Transportation Authorities and Municipalities

S.L. 2000-67, Sec. 25.7 (HB 1840) authorizes the Secretary of Transportation to enter into State full funding grant agreements with a regional transit authority or city to provide State matching funds for a "new start" fixed guideway transit project.

This section became effective July 1, 2000. (GSP)

DOT Right-of-Way Filing

S.L. 2000-68 (SB 328) increases the fee payable to the register of deeds by the Department of Transportation for the filing of right-of-way plans from $5 for each plan to $21 for the first page and $5 for each additional page of each plan.

This act becomes effective January 1, 2001. (WLG)

Establish Metropolitan Planning Boards

S.L. 2000-80 (HB 1288) amends State law governing Metropolitan Planning Organizations (MPOs) as follows:

- Recognizes Metropolitan Planning Organizations in State law.
- Requires the Governor and Secretary of Transportation, in cooperation with affected MPOs, to evaluate the boundaries, structure and governance of each MPO in the State after each decennial census, and more frequently if requested by an MPO.
- Authorizes the North Carolina Department of Transportation to provide staff and funding assistance to any MPO considering consolidation.
- Provides for a new project selection process, if existing MPOs voluntarily choose to consolidate.
- Requires all MPOs with at least 25% of their area of jurisdiction located within a nonattainment area to:
  - Consult on appropriate emissions reduction strategies and adopt a single conformity plan, or face loss of designated transportation funds.
  - Complete a boundary, structure and governance evaluation within one year of the effective date of the non-attainment designation.

This act becomes effective January 1, 2001. (GSP)

Oversize Load Permits and Penalties

S.L. 2000-109, Secs. 7(a)-(g) (HB 1854). See **Taxation.**

DOT Establish Rural Planning Organizations

S.L. 2000-123 (SB 1195) authorizes the Department of Transportation (DOT) to establish Rural Planning Organizations (RPOs). RPOs are defined as voluntary organizations of locally elected officials and representatives of local transit systems formed by agreement with DOT to plan rural transportation systems and to advise DOT on rural transportation policy. Specifically, this act:

- Authorizes DOT to establish RPOs by memorandum of understanding with interested locally elected officials and representatives of local transit systems, and requires the area of any RPO created to include 3 to 15 counties, and at least 50,000 persons.
- Sets out the duties of an RPO to include:
  - Developing long range transportation plans;
  - Providing a forum for public participation in rural transportation planning;
  - Developing and prioritizing suggestions for TIP projects; and
  - Providing transportation-related information to local governments.
- Provides a procedure to set up the administration of any RPO formed under this act, and authorizes DOT to make grants to RPOs for planning staff if funds are appropriated for that purpose.
- Provides that nothing in this act shall require the General Assembly to appropriate funds to implement it, and prohibits the use of road maintenance funds to implement this act.
- Requires DOT to report to the Joint Legislative Transportation Oversight Committee on the implementation of this act on or before December 1, 2000.

This act became effective July 1, 2000. (GSP)

I/M Technology Amends/CMAQ Funds

S.L. 2000-134 (HB 1638). See **Environment and Natural Resources.**

DOT Authorized to Provide Water Access Facilities

S.L. 2000-140, Sec. 102 (SB 1335) authorizes the Department of Transportation to provide facilities for recreational uses by establishing connections between the highway system and the navigable and nonnavigable waters of the State.

This section became effective July 13, 2000. (GSP)

Toll Roads

S.L. 2000-145 (HB 1630) authorizes the North Carolina Department of Transportation (DOT) to issue a license for the construction of one privately owned and operated toll road or bridge project. The license must be issued prior to July 1, 2003 for a license period of up to 50 years. Prior to the issuance of the license, DOT must make a written determination that the proposed project is necessary and in the public interest. Any applicant for the license must submit detailed financial data to DOT showing its ability to finance the project. The license must reserve, to the State, the authority to use the right-of-way for other transportation or utility related purposes. DOT has discretion to include any conditions in the license and is required to include provisions concerning design, maintenance, connections to the existing highway system, liability, and location of the project. The licensee must endeavor to acquire all right-of–way interests required for the project through private negotiation. However, DOT may exercise its power of eminent domain to acquire necessary property rights if the licensee cannot acquire these interests at a reasonable price. A licensee must reimburse DOT its full costs, including attorney fees, for acquiring the property interests by eminent domain for the privately owned portion of the project. DOT may convey property it holds to the licensee at fair market value if the property is necessary for the project. DOT is exempted from conflicting laws (bidding requirements and advertisement) for the purpose of entering into contractual licensing agreements. The State's motor vehicle laws apply on any project licensed under this section. The Highway Patrol and Division of Motor Vehicles have the same authority over the project licensed under this act as any other road. DOT is required to report to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Transportation Appropriations Subcommittee by February 1, 2001 and every year thereafter on any toll project licensed under this act. This act requires DOT to study the feasibility of construction of State-owned and operated toll roads and report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Transportation Appropriations Subcommittee by February 1, 2001.

This act became effective August 2, 2000. (GSP)

Butner/Powell Bill Change

S.L. 2000-165 (HB 1498). See **Local Government.**

Municipal Participation

S.L. 2000-188 (SB 1200) authorizes all municipalities to participate in the funding of State transportation improvement projects located in the municipality or its extraterritorial jurisdiction.

Under prior law, municipalities could only participate in the costs of the following State highway construction projects: projects funded by the Small Urban Construction Program; projects funded by the municipality, upon a favorable referendum of the voters of the municipality; development access projects (new travel lanes, turn lanes, curbs and gutters, and drainage); projects to add improvements to an existing Department of Transportation (DOT) project that DOT would not normally include; and, for municipalities with a population over 10,000, a sliding-scale participation of between 5% and 25% of the cost of right-of-way.

S.L. 2000-188 expands the authority for municipal participation in State highway construction to all municipalities, and removes restrictions on the participation. Specifically, this act:

- Authorizes municipalities to initiate participation by submitting a proposal to DOT.
- Provides for DOT and the municipality to include their respective responsibilities in an agreement.
- Provides that a municipality may participate in a State project without a referendum; provides that if a municipality participates in a project, DOT must insure that the municipality's participation does not cause any disadvantage to any other project in the Transportation Improvement Program (TIP) located outside the municipality.
- Provides that any funds made available as a result of municipal participation in a project contained in the TIP shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.
- Prohibits DOT from agreeing to provide any additional total funds to a municipality in exchange for municipal participation.
- Removes the provision prohibiting municipalities with populations of less than 10,000 from participating in any State transportation project.
- Removes the percentage restrictions that limited participation by municipalities with populations over 10,000.
- Authorizes the counties of Burke, Cabarrus, and Mecklenburg to participate in transportation projects located anywhere in the respective county, to the same extent as municipalities (This authority is in addition to that granted by S.L. 1993-478, which authorized these counties to assist thoroughfare plan implementation by purchasing, or acquiring property for road construction projects by eminent domain, donations and dedications, and entering agreements with municipalities).

This act became effective July 1, 2000. (GSP)

Motor Vehicles

Exempt Disabled Veteran Vehicles

S.L. 2000-18 (HB 133). See **Taxation.**

Traffic Law Enforcement Statistics

S.L. 2000-67, Sec. 17.2 (HB 1840). See **Criminal Law.**

Dark Window Inspection Fee

S.L. 2000-75 (HB 723) creates a medical exception from the window tinting restrictions for any person who suffers from a medical condition that causes that person to be photosensitive to visible light. This act also eliminates the fee for inspecting after-factory tinted windows for vehicles owned by persons who have been issued a medical exception permit.

DMV must report to the Joint Legislative Transportation Oversight Committee six months after the first permit is issued as to the number of permits issued and the projected operating costs of the program.

This act becomes effective July 1, 2001. (WLG)

Drivers Points No Child Restraint

S.L. 2000-117 (SB 1347). See **Criminal Law and Procedure**.

Interlock/Open Container Changes

S.L. 2000-155 (HB 1499). See **Criminal Law and Procedure.**

Special Registration Plates

S.L. 2000-159 (SB 1210) authorizes the Division of Motor Vehicles to issue seven new special registration plates as follows, provided DMV receives at least 300 applications for the plate:

- Ducks Unlimited – bearing the logo of Ducks Unlimited, Inc; additional fee of $20, with a portion going to the Wildlife Resources Commission to support conservation programs of Ducks Unlimited, Inc. in this State.
- Goodness Grows – bearing the Goodness Grows in North Carolina logo, along with the phrase "Agriculture: NC's #1 Industry"; additional fee of $25, with $10 going to the North Carolina Agricultural Promotions, Inc. to promote the sale of North Carolina agricultural products.
- Litter Prevention – bearing a phrase and picture promoting litter prevention in the State; additional fee of $20, with $10 going to the Litter Prevention Account created by this act. The account is controlled by the Department of Transportation (DOT), which will allocate funds to reduce litter in the State. By October 1 of each year, DOT must report to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission all receipts and allocations for the account during the previous fiscal year.
- Omega Psi Phi Fraternity – bearing the fraternity's symbol and name; additional fee of $20, with $10 going to the United Negro College Fund for the benefit of UNCF colleges in this State.
- Support Public Schools – bearing a picture representing a schoolhouse along with the phrase "Support Our Public Schools"; additional fee of $20, with $10 going to the Fund for the Reduction of Class Size in Public Schools created by this act. The new fund is controlled by the State Board of Education, which is directed to allocate the funds to local school administrative units to reduce class size.
- Tobacco Heritage – bearing a picture of a tobacco leaf and plow; with an additional fee of $10.
- The North Carolina Maritime Museum – an additional fee of $30, with $20 going to Friends of the Museum, North Carolina Maritime Museum, Inc. to support educational programs and conservation programs, and for operating expenses of the North Carolina Maritime Museum.

Additionally, this act exempts the Legion of Valor, Silver Star Recipient, 100% Disabled Veteran, and Ex-Prisoner of War plates from the additional fee normally imposed for a special registration plate.

This act modifies the basis for issuing permanent plates to church buses, by allowing the plates to be issued to a bus owned by a church and used for transporting individuals to any church related activities. Previously, permanent plates could be issued to church buses only if they were used to transport persons to Sunday school and church services.

This act requires that, effective May 1, 2001, all brake lights on the rear of a motor vehicle must have red lenses so that the light displayed is red.

This act became effect August 2, 2000. (BC)

Temporary Motor Vehicle Lien Filing

S.L. 2000-182 (HB 1566) authorizes a motor vehicle dealer who is also a first lienholder on the vehicle to obtain a temporary lien on the vehicle by making a filing with the Division of Motor Vehicles for a temporary lien when a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable. This act provides that a false filing for a temporary lien is a class H felony. This act authorizes DMV to charge a fee of up to $10 for each temporary lien filed, credited to the Highway Fund.

In addition, this act authorizes a motor vehicle dealer to transfer title to a motor vehicle without a manufacturer's certificate of origin or existing title by certifying in writing in a sworn statement to DMV that all prior perfected liens have been paid and that the dealer is unable to obtain the statement of origin or certificate of title. This act provides that the filing of a false sworn certification is a class H felony. This act

also authorizes a motor vehicle dealer to issue a second temporary registration plate, upon expiration of the first, upon showing that a temporary lien has been properly filed. This act adds "acceptance of a temporary lien filing" to the list of transactions for which a commission contract agent may be compensated.

This act becomes effective May 1, 2001 and applies to offenses occurring on or after that date. (GSP)

Service in DMV Lien Cases/Vehicle Width and Length

S.L. 2000-185 (HB 1501) allows for service of process by publication, in addition to personal service and service by certified and registered mail, in a small claims action to enforce a motor vehicle mechanics lien.

This act also increases the maximum allowable width of vehicles operated on State highways from 96 inches to 102 inches and directs the Joint Legislative Transportation Oversight Committee to study the issue of motor vehicle lengths.

This act became effective August 2, 2000. (WLG)

Outdoor Advertising

Extend Billboard Moratorium

S.L. 2000-101 (SB 1275). See **Environment and Natural Resources**.

Public Transportation

Clarify Development Authority of Regional Public Transportation Authorities

S.L. 2000-67, Sec. 25.6 (HB 1840) amends the powers of a Regional Public Transportation Authority (Triangle Transit Authority) to authorize the Authority to undertake joint transit development projects.

This section became effective July 1, 2000. (GSP)

Trucks

Aggregate Weight Change

S.L. 2000-57 (SB 1081) amends the law regarding the weight and load of vehicles to provide that weight limitations and penalties do not apply to vehicles that meet all of the following conditions:

- A vehicle is hauling aggregates from a distribution yard or a State-permitted production site within a North Carolina county contiguous to the North Carolina State border to a destination in an adjacent state.
- A vehicle that does not operate on an interstate highway or posted bridge.
- A vehicle that does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles.

All other enforcement provisions of the Motor Vehicle Act remain applicable.

This act became effective July 1, 2000. (BC)

Exempt Farm Trucks from the State Requirements that Certain Business Vehicles Be Marked

S.L. 2000-67, Sec. 25.8 (HB 1840) exempts farm vehicles not operating in interstate commerce and weighing over 10,000 pounds from the State requirement that the name of the owner be printed on the vehicle.

This section became effective July 1, 2000. (GSP)

Detention of Commercial Vehicles Until Fines and Penalties Are Paid

S.L. 2000-67, Sec. 25.11 (HB 1840) authorizes law enforcement officers to detain any commercial motor vehicle when the motor carrier has been assessed a fine for an out-of-service violation and that fine has not been paid. In addition, this section specifies that the motor carrier is responsible for the contents of and storage charges for any motor carrier detained pursuant to this section.

This section became effective July 1, 2000. (GSP)

Railroads

NCRR Amendments

S.L. 2000-146, as amended by S.L. 2000-138, Secs. 8.1-8.3(b) (SB 1183, as amended by SB 787) came as a recommendation of the Future of North Carolina Railroad Study Commission (Commission). It makes a number of changes in the laws governing the North Carolina Railroad (NCRR) and railroad rights-of-way in general.

The State of North Carolina owns all the voting shares of the NCRR, which is a for profit corporation. This act allows the NCRR to change to a not-for-profit corporation without the prior approval of the General Assembly, provided the State retains complete control of the voting shares.

Effective July 1, 2000, the NCRR must report annually to the Joint Legislative Commission on Governmental Operations regarding, among other things, all leases, sales or acquisitions of real property, and also provide a financial statement. The Governor or any committee of the General Assembly may request additional information. At the time the NCRR provides requested information, it may indicate whether some or all of the information is confidential. Confidential information includes information related to a proposed specific business transaction where inspection, examination, or copying of the records would frustrate the purpose for which the records were created, or information that is subject to confidentiality obligations of the NCRR. Confidential information is not subject to a request for inspection under the public records laws.

The NCRR may dispose of or encumber its franchise, right-of-way, or property upon the approval and consent of the Board of Directors. Previously, the consent of the Governor and the Council of State was required.

This act grants to the NCRR the authority to obtain a fee simple interest in land through condemnation. Previously, it had the authority to obtain only a right-of-way using the right of eminent domain. In addition, the NCRR may now use “quick take” authority for its condemnation proceedings.

This act also creates a new criminal offense of “Trespassing on railroad right-of-way”. A person who is on a railroad right-of-way without permission is guilty of a Class 3 misdemeanor. Railroad rights-of-way typically extend from 50 to 100 feet on either side of the tracks. General trespass laws require property to be posted, or the owner to otherwise give notice that entrance is not permitted. The trespass offense does not apply to a person using a public or private crossing or to legally abandoned railroad rights-of-way. The criminal provisions are effective December 1, 2000 and apply to offenses committed on or after that date.

This act makes several amendments to the Future of the North Carolina Railroad Study Commission. Effective July 1, 2000, the Commission is made permanent (it had originally expired upon filing a final report in April of 2000). The Commission is directed to make annual reports to the General Assembly at the convening of each regular session. The terms of the members are to be two years and begin on January 15 of each odd-numbered year. In addition to its current duties, the Commission is directed to study the importance of railroads and railroad infrastructure improvements to economic development in North Carolina, methods to expedite property disputes between railroads and private landowners, and all aspects of the operation, structure, management, and long-range plans of the NCRR.

Except as otherwise indicated, this act becomes effective December 1, 2000. (KG)

Studies
New / Independent Studies / Commissions

Future of the North Carolina Railroad Study Commission

S.L. 2000-138, Secs. 8.1-8.1(b) (SB 787) make several amendments to the Future of the North Carolina Railroad Study Commission. Effective July 1, 2000, the Commission is made permanent (it had originally expired upon filing a final report in April of 2000). The Commission is directed to make annual reports to the General Assembly at the convening of each regular session. The terms of the members are to be two years and begin on January 15 of each odd-numbered year. In addition to its current duties, the Commission is directed to study the importance of railroads and railroad infrastructure improvements to economic development in North Carolina, methods to expedite property disputes between railroads and private landowners, and all aspects of the operation, structure, management, and long-range plans of the NCRR. (KG)

State Highway Patrol to Study Reimbursements for Costs of Added Special Services at Scheduled Events

S.L. 2000-67, Sec. 25.2 (HB 1840) directs the State Highway Patrol to study implementation of a program to reimburse the State for the costs of added services provided at scheduled events. This act directs the State Highway Patrol to report to the Joint Legislative Transportation Oversight Committee by November 1, 2000.

Study of Commission Contracts for Issuance of Motor Vehicle Registration Plates and Certificates

S.L. 2000-67, Secs. 25.5(a)-(k) (HB 1840) create the Commission to Study Commission Contracts for the Issuance of Motor Vehicle Registration Plates and Certificates. The Commission is to be comprised of 11 members, including 8 members of the General Assembly, 2 people currently contracted with the Division of Motor Vehicles to issue plates and certificates, and the Commissioner of Motor Vehicles or his designee.

The Commission is directed to:

- Review the history leading up to enactment of G.S. 20-63(h), which provides for contracts for the issuance of plates and certificates.
- Study current implementation of G.S. 20-63(h).
- Study how other states issue plates and certificates.
- Study implications of using electronic applications and collections as authorized in G.S. 20-63(i).
- Study any other relevant factors.

- Make findings and recommendations on improving the current system while reducing costs to the State.

These sections direct the Commission to make a final report to the General Assembly on or before the first day of the 2001 Session of the General Assembly. The Commission will terminate upon the filing of this report. (WLG)

Referrals to Departments, Agencies, Etc.

Department of Transportation to Study Providing Passenger Rail Service to Western North Carolina

S.L. 2000-67, Sec. 25.15 (HB 1840) directs the Department of Transportation to study the feasibility of providing passenger rail service to western North Carolina and submit a report by March 1, 2001 to the Chairs of the Joint Transportation Appropriations Subcommittees and the Fiscal Research Division. (GSP)

Department of Transportation to Study Oversize Load Permits and Penalties

S.L. 2000-109, Sec. 7(g) (HB 1854) directs the Department of Transportation to review the oversize and overweight permit program and report to the Joint Legislative Transportation Oversight Committee by December 1, 2002 and every two years thereafter. (GSP)

Department of Transportation to Study Toll Roads

S.L. 2000-145, Sec. 2 (HB 1630) requires the Department of Transportation to study the feasibility of construction of State-owned and operated toll roads and report to the Joint Legislative Transportation Oversight Committee and the Joint Transportation Appropriations Subcommittee by February 1, 2001. (GSP)

Referrals to Existing Commissions/Committees

Joint Legislative Transportation Oversight Committee

Highway Fund/Trust Fund Study

S.L. 2000-67, Sec. 25.14 (HB 1840) directs the Joint Legislative Transportation Oversight Committee to contract with a consultant to study Highway Fund and Highway Trust Fund cash balances and use of cash-flow finances.

The Committee is directed to submit its report on these topics to the chairs of the House and Senate Transportation appropriation subcommittees, and the Fiscal Research Division, by March 31, 2001.

Abandoned Vehicles/Part-time DOT Employee Retirement Benefits

S.L. 2000-138, Sec. 7.1 (SB 787) authorizes the Joint Legislative Transportation Oversight Committee to study:

(1) Abandoned vehicles on State Roads; and

(2) Policy associated with retirement benefits for part-time Department of Transportation

employees.

The Committee is directed to submit its report on these topics, if any, to the 2001 General Assembly upon its convening.

Motor Vehicle Length

S.L. 2000-185, Sec. 3 (HB 1501) directs the Joint Legislative Transportation Oversight Committee to study the issue of motor vehicle lengths. The Committee is directed to submit its report on this topic to the 2001 General Assembly by January 15, 2001. (GSP)

Study and Recommend Fee for Motor Vehicle Emissions Inspection

S.L. 2000-134, Sec. 23 (HB 1638). See **Environment and Natural Resources**.

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By House Bill number, House Joint Resolution number, Ratified Resolution number, Session Law number, Senate Bill number, and Senate Joint Resolution number.

Senate Joint Resolutions