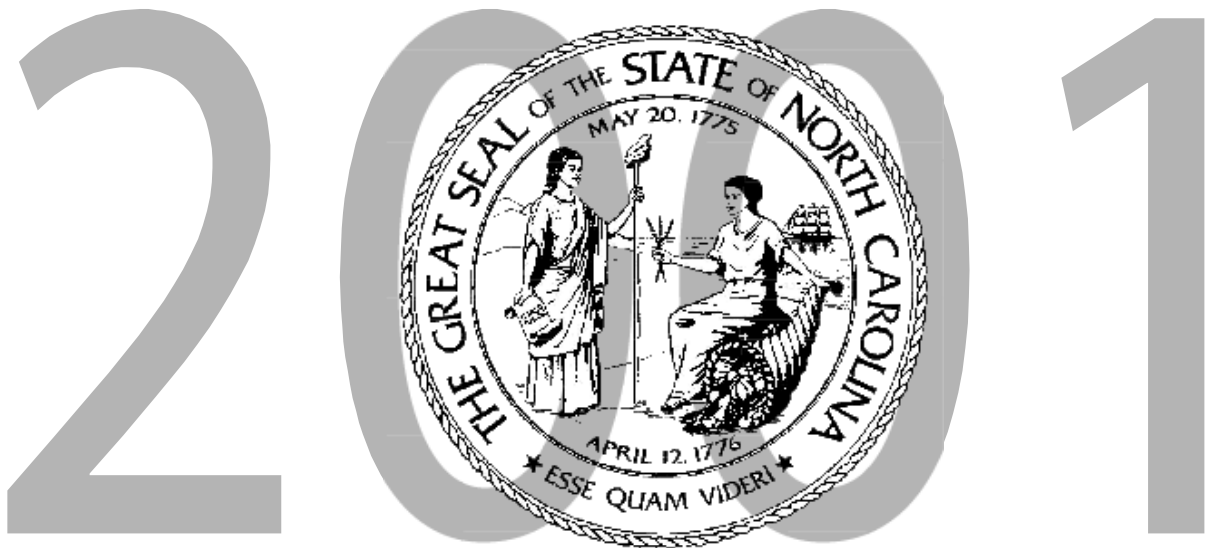


# **SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION - 2001**

# SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION



2001 GENERAL ASSEMBLY  
2001 REGULAR SESSION

RESEARCH DIVISION  
N.C. GENERAL ASSEMBLY  
MARCH 2002

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To the Members of the 2001 Session of the 2001 General Assembly:

This publication contains summaries of all substantive legislation of general applicability and certain local legislation having general import of the 2001 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: Dee Atkinson, Cindy Avrette, Brenda Carter, Erika Churchill, Karen Cochrane-Brown, Kristen Crosson, Amy Currie, Tim Dodge, Frank Folger, Bill Gilkeson, George Givens, Wendy Graf-Ray, Trina Griffin, Jeff Hudson, Shirley Iorio, Dianna Jessup, Robin Johnson, Sara Kamprath, Esther Manheimer, Theresa Matula, Giles Perry, Barbara Riley, Walker Reagan, Steve Rose, Mary Shuping, Susan Sitze, and Richard Zechini. Also contributing are Martha Harris, Canaan Huie, and Gann Watson of the Bill Drafting Division, and Martha Walston of the Fiscal Research Division. Barbara Riley and Susan Sitze served as the chief editors of this year's summaries. Amy Currie, Wilma Hall and 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.ncga.state.nc.us>. Click on "Legislative Publications". It is listed under Research. Each summary is hyperlinked to the final bill text, the bill history, and any applicable fiscal note.

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

Yours truly,



Terrence D. Sullivan  
Director of Research

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Chapter 1  
Agriculture

Erika Churchill (EC), Barbara Riley (BR)  
and others (See references by initials on page 269 of this publication.)

**Enacted Legislation**

**Agriculture**

**Control Foot and Mouth/Animal Disease Outbreaks**

S.L. 2001-12 (SB 779) authorizes the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, to develop and implement emergency procedures determined necessary to prevent the outbreak of an infectious animal disease that has the potential for very serious and rapid spread, is of serious socio-economic and public health consequence, or is of major importance in the international trade of animals and animal products. The emergency measures that may be implemented include restrictions on the transportation of potentially infected animals, emergency disinfectant procedures at portals of entry into the State, the right to enter onto property to examine animals believed to be infected or exposed to disease, inspections without warrants of individuals and motor vehicles, quarantine of animals, and destruction of animals where necessary to control a contagious disease.

Persons who willfully violate the provisions of the act shall be guilty of a Class 2 misdemeanor. Further, it is prohibited to knowingly or willfully conceal animals subject to quarantine or fail to report the occurrence of a disease for which quarantine is in effect. Persons knowingly concealing animals subject to quarantine or failing to report the occurrence of an animal disease shall be subject to an administrative penalty not to exceed \$10,000 per violation.

The act became effective April 4, 2001 and expires April 1, 2003. (BR)

**Extend Swine Moratoria/Animal Waste Amendments**

S.L. 2001-254 (HB 1312). See **Environment**.

**Soil and Water Conservation Commission/Powers & Duties**

S.L. 2001-284 (HB 1111). See **Environment**.

**Injury to Commodities or Production Systems**

S.L. 2001-290 (HB 218) creates a civil cause of action for double damages for the unlawful and willful injury or destruction of agricultural commodities or production systems. The value of agricultural commodities includes any costs for research and development of the commodities, diminution in market value, and other incidental and consequential damages proven by the plaintiff.

The act became effective October 1, 2001. (BR)

## **Water Quality/Livestock Markets/Animal Ops**

S.L. 2001-326 (SB 848). See **Environment**.

## **Tar Pamlico Agricultural Rule**

S.L. 2001-355 (HB 570). See **Environment**.

## **Promote NC Farm Products/Rest Areas**

S.L. 2001-424, Sec. 17.1 (SB 1005, Sec. 17.1) provides that the North Carolina Department of Agriculture and Consumer Services, with the permission of the Department of Transportation, may distribute promotional literature and free samples of North Carolina farm products at rest areas and welcome centers located on controlled access facilities.

This section became effective July 1, 2001. (BR)

## **Transfer Rural Rehab Corp to Agricultural Finance Auth**

S.L. 2001-424, Sec. 17.2 (SB 1005, Sec. 17.2) provides for a Type I transfer of the North Carolina Rural Rehabilitation Corporation and its Board of directors, to the North Carolina Agricultural Finance Authority.

This section became effective July 1, 2001. (BR)

## **Farmland Preservation Funds**

S.L. 2001-424, Sec 17.3 (SB 1005, Sec. 17.3) directs the North Carolina Department of Agriculture and Consumer Services to use \$200,000 of the funds appropriated to it to fund the North Carolina Farmland Preservation Trust Fund.

This section became effective July 1, 2001. (BR)

## **Farmers Markets/Ag Centers Vending Facility Exemption**

S.L. 2001-424, Sec. 17.4 (SB 1005, Sec. 17.4) amends Article 3 of Chapter 111 of the North Carolina General Statutes requiring that State agencies give preference, at the request of the Department of Health and Human Services, to visually handicapped persons in the operation of vending facilities on State property. Specifically, the act amends G.S. 111-42(c) to add farmers markets and agricultural centers to those facilities excluded from the provisions of Article 3.

This section became effective July 1, 2001. (BR)

## **Grape Growers Council Funds**

S.L. 2001-475 (SB 970) See **Alcoholic Beverage Control**

## **Amend Use Value Statute**

S.L. 2001-499 (HB 1427). See **Taxation**.

## Wildlife

### Nonresident License Fees

S.L. 2001-91 (SB 888) increases the fees for nonresident hunting and fishing licenses and makes other changes affecting licenses issued by the Wildlife Resources Commission.

The nonresident hunting license fees are set as follows:

- Nonresident State Hunting License:
- Season license - \$60
- 6 day License - \$45
- Nonresident bear/wild boar Hunting License - \$125. In addition, persons who have purchased a nonresident lifetime sportsman combination license prior to May 24, 1994 shall not have to purchase this license.
- Nonresident Hunting and Fishing Guide License - \$100. The act also repeals the provisions of the statute requiring reciprocity by the nonresident's home state.
- Nonresident Commercial Special Device License - \$200.

The act allows the Wildlife Resources Commission to issue hunting and fishing guide licenses, trapping licenses, and special device licenses on a staggered, rather than an annual, basis. The act also provides that holders of a lifetime combination hunting and fishing license for disabled residents may fish in public trout waters.

The act became effective July 1, 2001. (BR)

## Studies

### Legislative Research Commission

#### The 2001 Studies Bill

S.L. 2001-166, Sec. 2.1(3)(a) (HB 166, Sec. 2.1(3)(a)) authorizes the Legislative Research Commission to study enhancing fairness in agricultural contracts.

This section became effective December 6, 2001. (BR)

## Chapter 2 Alcoholic Beverage Control

Brenda Carter (BC), Susan Sitze (SS)  
and others (See references by initials on page 269 of this publication.)

### Enacted Legislation

#### **Joint ABC Store Operations**

S.L. 2001-128 (HB 446) adds a new subsection to the existing law regarding the merger of local ABC systems, to authorize local ABC boards to enter into management agreements with one another. These agreements would not result in a complete merger of the systems involved, but would permit ABC systems to enter into operating agreements that provide for one ABC system to operate one or more ABC stores owned by another ABC system. The agreements must be approved by the ABC Commission and are subject to the reasonably applicable provisions of the law governing the merger of ABC systems. This means that the agreements may be entered if the systems serve the same general area or are in close proximity to each other, that the systems will agree upon distribution of profits, and that the agreements may be dissolved at any time.

The act became effective May 25, 2001. (BC)

#### **Sports Club ABC Permits**

S.L. 2001-130 (HB 1143) rewrites the law regarding the issuance of ABC permits to residential private clubs and sports clubs. As defined in G.S. 18B-1000, a residential private club is one that is located in a privately owned, primarily residential and recreational development. A sports club is an establishment substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both.

The act amends G.S. 18B-1006(k), which authorizes the ABC Commission to issue permits, without approval at an election, to a residential private club or a sports club. The act allows the ABC Commission to issue the permits on a statewide basis, except when the sale of mixed beverages is not lawful within the jurisdiction and the locality has voted against the sale of mixed beverages in a referendum conducted on or after September 1, 2001. If the issuance of permits is prohibited by the exception in the previous sentence, the Commission may renew existing permits and may continue to issue permits for a business location that previously held permits. The act provides that no ABC permit may be issued to any residential private club or sports club that practices discrimination on the basis of race, gender or ethnicity.

Effective August 23, 2001 (90 days after the effective date of the act), the following counties are exempt from the residential private club and sports club permit provisions of the act: Lincoln, Harnett, Davie, Graham, Swain, Yancey, and McDowell. Permits applied for before the effective date of the exemption will remain valid. The act includes a severability and savings clause in the event the exemption is found by a court to be unconstitutional or otherwise invalid.

The act became effective May 25, 2001. (BC)

## Promoting Grape and Wine Industry

S.L. 2001-262 (SB 823) as amended by S.L. 2001-487, Sec. 49 (HB 338, Sec. 49), makes changes to the laws governing the production, sale and consumption of wine.

The act authorizes the ABC Commission to issue a wine tasting permit to any food business (grocery stores, convenience stores, and other establishments, such as variety stores or drugstores, where food is regularly sold). The wine tasting permit will allow the offering of a sample of one or more unfortified wine products, in amounts of no more than one ounce for each sample, without charge, to customers of the business.

The act amends the law regarding unfortified winery permits to provide that under certain conditions and under limited circumstances the holder of the permit may receive, in closed containers, unfortified wine produced outside North Carolina under the winery's label from grapes, berries, or other fruits owned by the winery, and may sell, deliver, and ship that wine to wholesalers, exporters, and nonresident wholesalers in the same manner as its wine manufactured in North Carolina. The holder of an unfortified winery permit may, upon obtaining the appropriate permit, sell wine owned by the winery for on- or off-premise consumption at no more than three other locations in the State and may be eligible to obtain a wine wholesaler permit to sell, deliver, and ship wholesale unfortified wine manufactured at the winery.

The act rewrites the law governing winery special event permits, making the permit issuable to a wine producer as well as to a holder of an unfortified winery or a limited winery permit.

The act authorizes the ABC Commission to issue a "wine producer" permit to farming establishments of at least five acres committed to the production of grapes, berries, or other fruits for the manufacture of unfortified wine. Holders of a wine producer permit may:

- Ship crops grown on land owned by it in North Carolina to a winery, inside or outside the State, for the manufacture and bottling of unfortified wine from those crops and may receive that wine back in closed containers.
- Sell, deliver, and ship the unfortified wine manufactured from its crops in closed containers to wholesalers and retailers as authorized by the ABC laws.
- Sell the wine manufactured from its crops for on- or off-premise consumption upon obtaining the appropriate permit.

The act also authorizes a unit of local government to obtain a special one-time permit to serve wine, malt beverages, and spirituous liquor at a ticked event held to raise funds.

The act became effective July 4, 2001. (BC)

## Grape Growers Council Funds

S.L. 2001-475 (SB 970) increases the amount of wine tax proceeds earmarked annually for the Grape Growers Council. The act amends G.S. 105-113.81A to require that all of the net proceeds of the excise tax collected on unfortified or fortified wine bottled in North Carolina be credited on a quarterly basis to the Department of Agriculture and Consumer Services, subject to a \$350,000 limit per fiscal year. The funds will be allocated to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina.

The act became effective October 1, 2001, and applies to distributions made on or after that date. (BC)

## Redefine "Special ABC Area"

S.L. 2001-515 (HB 948) makes various changes in the State's alcoholic beverage control laws.

The act amends the definition in G.S. 18B-101 of Special ABC Areas within which qualified persons and establishments may be issued permits under G.S. 18B-603(f2) for the sale of malt beverage, wine, and mixed beverages.

The act gives the ABC Commission specific authority to summarily suspend or revoke without prior hearing the permit of an establishment that fails to adhere to record-keeping requirements applicable to permittees located in designated Urban Redevelopment Areas. The act requires a city to file with the ABC Commission a certified copy of information designating an Urban Redevelopment Area, including maps that can be made available to any ABC permittee who requests it. The summary suspension/revocation may occur only if the city has filed required information designating the location of the Urban Redevelopment Area, and has notified permittees located in the area of the applicability of the sales restrictions. The permittee may make written request for a hearing on the suspension/revocation, and hearings will be held in compliance with applicable provisions of the Administrative Procedure Act.

The act amends G.S. 18B-600(f), which provides for township elections in a county where ABC stores have been established by petition pursuant to law on the question of ABC stores, and on the sale of malt beverages, unfortified wine, or mixed beverages. The act provides for township elections in certain travel-oriented barrier island townships. An election on the question of mixed beverages may be called in two qualifying townships voting together upon request of the county board of commissioners or upon petition of 25% of the registered voters of the two townships taken together; the votes of the two townships counted together would determine the result of the election.

The act amends G.S. 95-25.5 to allow a youth who is at least 14 years old to work on the outside grounds of ABC-licensed premises so long as the youth's employment does not involve the serving, dispensing, or sale of alcoholic beverages. (For example, caddying at a golf club.) The act requires the employer to obtain the written consent of the minor's parent or guardian.

The act became effective January 4, 2002. (BC)

## Possessing Fraudulent ID to Get Liquor

S.L. 2001-461 (SB 833). See **Criminal Law and Procedure**.

## Studies

### **New Independent Studies/Commissions**

#### **Legislative Alcoholic Beverage Control Study Commission**

S.L. 2001-491, Part IV (SB 166, Part IV) creates the Legislative Alcoholic Beverage Control Study Commission. The Commission is directed to study the following matters related to Alcoholic Beverage Control:

- Benefits and costs of "control" and "license" systems.
- Aspects of organization, structure, and function of the North Carolina ABC Commission and local alcoholic beverage control systems.
- Schedule, collection, and distribution of alcohol-related taxes and fees.

- Possible efficiency enhancements to the ABC system.
- Other Alcoholic Beverage Control issues. - Including location and zoning of retail stores, liquor advertising, effects of price on alcohol consumption, uniformity throughout the State of alcoholic beverage availability and sales, and direct purchase of alcoholic beverages from out-of-state wholesalers.

In addition to matters listed above, the Commission is authorized to study any other Alcoholic Beverage Control-related issues approved by its cochairs or recommended by the Chairman of the Alcoholic Beverage Control Commission and approved by the cochairs.

The Commission is required to submit an interim report to the Joint Legislative Commission on Governmental Operations, to the cochairs of the House and Senate Appropriations Committees, to the Cochairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and to the General Assembly's Fiscal Research Division on or before April 15, 2002. The Commission is required to submit a final report to the recipients of the interim report on or before March 1, 2003.

The provision became effective December 19, 2001. (BC)

## **Underage Drinking Study Commission**

S.L. 2001-491, Part XI (SB 166, Part XI) creates the Underage Drinking Study Commission. The Commission is directed to study the following matters related to alcohol consumption by persons under the age of 21:

- Commercial availability.
- Social and public availability.
- Restricting youth possession.
- Other underage alcohol consumption issues.

The Commission is required to make an interim report to the Joint Legislative Commission on Governmental Operations on or before May 1, 2001 and to submit a final report to the same body by December 1, 2002.

The provision became effective December 19, 2001. (SS)

## Chapter 3

### Anti-Terrorism

Dianna Jessup (DJ), Robin Johnson (RJ),  
Susan Sitze (SS) and others (See references  
by initials on page 269 of this publication.)

## Enacted Legislation

### **Terrorism Defense Funds**

S.L. 2001-457 (HB 1471) appropriates a total of \$31.9 million for the 2001-2002 fiscal year to implement terrorism defense. Of that amount, \$1.9 million was appropriated to the Department of Crime Control and Public Safety, Division of Emergency Management to implement terrorism defense measures, including purchasing materials and equipment, training personnel, developing operation plans, and equipping search and rescue teams. The Department must report to the Joint Legislative Commission on Governmental Operations on the use of these funds no later than 30 days after using those funds.

The act also approved the use by the Governor of up to \$30 million from the Savings Reserve Account to implement defense measures against all forms of terrorism. If used, the Governor is required to take steps to repay the monies if funds become available. The Governor is also required to report to the Joint Legislative Commission on Governmental Operations on the status and use of funds no later than 30 days after accessing the funds.

The act became effective November 6, 2001. (DJ)

### **Biological Agents Registry**

S.L. 2001-469 (HB 1472) directs the Department of Health and Human Services (DHHS) to establish and administer a biological agents registry (registry). The registry must identify the biological agents possessed and maintained by any person in the State. The Commission for Health Services is required to adopt rules that: (i) determine and list the biological agents that must be reported; (ii) designate the persons required to report and the specific information that must be reported, the manner and time frame, and to whom; (iii) provide for the release of registry information as part of a communicable disease investigation; (iv) establish a system of safeguards that requires persons who possess and maintain these agents to comply with the same federal standards that apply to persons registered under federal law; and (v) establish a process for reporting unauthorized or attempted possession of biological agents.

Information prepared for or maintained in the registry is confidential and is not a public record. However, DHHS may release this information for the purpose of conducting or aiding a communicable disease investigation. Information may be released to federal and other states' law enforcement agencies and to the U.S. Centers for Disease Control and Prevention.

DHHS may impose a maximum civil penalty of \$1,000 for each day of a willful or knowing violation of this act. A person may appeal this penalty under the Administrative Procedure Act.

The act became effective January 1, 2002. (RJ)



## Certain Weapons of Mass Destruction

S.L. 2001-470 (HB 1468) establishes a new Article 36B in Chapter 14 of the General Statutes relating to nuclear, biological, or chemical weapons of mass destruction. As used in these statutes, a "nuclear, biological, or chemical weapon of mass destruction" is (1) any weapon, device, or method that is designed or has the capability to cause death or serious injury through the release, dissemination or impact of radiation, a disease organism, or toxic or poisonous chemicals or their precursors; or (2) any substance that is designed or has the capability to cause death or serious injury and contains radiation, is or contains a toxic or poisonous chemical, or is or contains any microorganism, virus, bacterium, fungus, rickettsia, or toxin, or any genetically modified elements or microorganisms that are listed in referenced parts of Title 42, Code of Federal Regulations. The term also includes any combination of parts or substances either designed or intended for use in converting any device or substance into any nuclear, biological, or chemical weapon of mass destruction or from which a nuclear, biological, or chemical weapon of mass destruction may be readily assembled or created.

The act makes it unlawful to knowingly manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver, give to another, or acquire a nuclear, biological, or chemical weapon of mass destruction. Any person who violates this section is guilty of a Class B1 felony. This section does not apply to certain military personnel and law enforcement officers lawfully carrying out their duties; persons under contract with the federal or State government lawfully acting under their contracts or working under their direction; certain persons engaged in research and development for preventive, protective, or other peaceful purposes; and persons engaged in agricultural, pest control and other similar practices.

The act prohibits several other forms of conduct and provides the following penalties:

- Makes it unlawful to willfully injure another by the use of a nuclear, biological, or chemical weapon of mass destruction. Any person who violates this provision is guilty of a Class A felony and shall be sentenced to life imprisonment without parole.
- Makes it unlawful to attempt, solicit another, or conspire to injure a person by the use of a nuclear, biological, or chemical weapon of mass destruction. Any person who violates this provision is guilty of a Class B1 felony.
- Makes it unlawful to use the United States Postal Service or other delivery business to violate any of the provisions of Article 36B. Any person who violates this provision is guilty of a Class B1 felony.
- Makes it unlawful to make a report to any person, knowing or having reason to know the report is false, that causes a person to reasonably believe that a nuclear, biological, or chemical weapon of mass destruction is located at any place or structure. Any person who violates this section is guilty of a Class D felony. Also, a person convicted under this section may be ordered to pay restitution for damages resulting from the disruption of normal activities caused by the false report.
- Makes it unlawful to intentionally perpetrate a hoax with an object to cause a person reasonably to believe that the object is a nuclear, biological, or chemical weapon of mass destruction. Any person who violates this section is guilty of a Class D felony. Also, a person convicted under this section may be ordered to pay restitution for damages resulting from the disruption of normal activities caused by the hoax.

The act also provides that murder perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction is murder in the first degree, a Class A felony, and may be punished with death or imprisonment in the State's prison for life without parole.

The act amends G.S. 143-34.1(a1) to exempt the Governor from the requirement that he report to the Joint Legislative Commission on Governmental Operations prior to the establishment of receipt supported positions where there is an emergency or other exigent circumstances requiring additional personnel to respond to a threat of terrorism.

The act became effective November 28, 2001 and applies to offenses committed on or after that date. (SS)

## Studies

### Legislative Research Commission

#### The 2001 Studies Bill

S.L. 2001-491, Sec. 2.1F (HB 166, Sec. 2.1F) authorizes the Legislative Research Commission to study the ability of the State to respond to instances of suspected bioterrorism.

This section became effective December 6, 2001. (RJ)

## Chapter 4 Children And Families

Erika Churchill (EC), Amy Currie (AC), Frank Folger (FF),  
Dianna Jessup (DJ), Wendy Graf Ray (WGR)  
and others (See references by initials on page 269 of this publication.)

### Enacted Legislation

#### Marriage Law Amendments

S.L. 2001-62 (HB 142), as amended by S.L. 2001-487, Secs. 60 and 83 (HB 338, Secs. 60 and 83), amends the State's marriage law. The act raises the minimum age for marriage from 12 years of age to 14 years of age. Persons between the ages of 14 and 16 may get married only if the female applicant is pregnant or has given birth and intends to marry the father of the child, and any party that is between the ages of 14 and 16 receives authorization from a district court. A district court may authorize the marriage of a person between the ages of 14 and 16 only if the court finds that the underage party is capable of assuming the responsibilities of the marriage and the marriage will serve the best interest of the underage party. The court is directed to consider certain evidence in determining whether the marriage will serve the best interest of the underage party, and there is a rebuttable presumption that the marriage will not serve the best interest of the underage party when all living parents of the underage party oppose the marriage. The fact that the female is pregnant, or has given birth to a child, alone is not enough to establish that the best interest of the underage party will be served by the marriage.

The act establishes the procedure by which an underage party may seek judicial authorization. As a part of the proceeding a guardian ad litem, who must be an attorney, will be appointed to represent the best interest of the underage party. Notice of the proceeding must be provided to the parents of the underage party and any person, agency, or institution having legal custody or serving as a guardian of the underage party. The Court of Appeals has the discretion whether to hear an appeal from the proceeding, but a party to the proceeding does not have an automatic right of appeal. If the last judicial ruling denies the underage party judicial authorization to marry, the underage party cannot seek judicial authorization again until one year from the date of entry of the last judicial ruling.

Persons between 16 and 18 years of age may marry only upon receiving the written consent of a parent having full or joint legal custody of the underage party or a person, agency, or institution having legal custody or serving as a guardian of the underage party. Persons 18 years of age or older may marry without parental or judicial consent.

House Bill 142 also expands the list of persons that are authorized to perform marriages by specifically providing that a marriage may be performed in accordance with any mode of solemnization recognized by any federally or State recognized Indian Nation or Tribe. A marriage between a man and a woman licensed and solemnized according to the law of a federally recognized Indian Nation or Tribe is valid, but if the parties to the marriage obtain a marriage license from the register of deeds then the marriage is valid only if the issuance of the license and solemnization of the marriage is conducted in compliance with State law (Chapter 51 of the General Statutes).

The act also makes several changes with respect to the issuance of marriage licenses. Marriage licenses are now valid throughout the State, rather than just within the county in which they are issued. The license must still be returned to the register of deeds that issued it. If an applicant for a marriage license is over 18 years of age and is unable to appear in person before the register of deeds, the other party to the marriage may appear in person and submit a sworn and notarized affidavit in lieu of the absent applicant's personal appearance. In addition, the act clarifies what

information (age, marital status, and intention to marry) provided by the applicants for a marriage license that the register of deeds is to use to determine whether the applicants are authorized to marry. The act makes the designation of race on the marriage license optional and expands the options that an applicant has to choose from to be inclusive of all races. The options listed are the same options that were listed on the 2000 U.S. Census form. Errors on a marriage license application or on the marriage license may be corrected by the register of deeds upon the submission of an affidavit signed by one or both of the applicants for the marriage licensed accompanied by affidavits of at least two other persons who know the correct information. Obtaining, or aiding and abetting the obtaining, of a marriage license by misrepresentation or false pretenses is made a Class 1 misdemeanor. The Administrative Office of the Courts is directed to develop any and all forms necessary for carrying out the purpose of the act and distribute them to the Office of the Clerk of Superior Court in each county.

The act also provided that a regular resident superior court judge could perform marriage ceremonies effective May 19, 2001, through May 28, 2001. The remainder of the act became effective October 1, 2001, except the amendments in S.L. 2001-487, Sec. 60 and 83, which became effect December 6, 2001. (RZ)

## **Sanitation Rules/Family Foster Homes Exempt**

S.L. 2001-109 (SB 541), as amended by S.L. 2001-487, Sec. 84 (HB 338, Sec. 84), exempts single-family dwellings that are used for family foster homes or therapeutic homes from provisions in the General Statutes that require rules for sanitation requirements for institutions and facilities at which individuals are provided room or board. The act also redefines "therapeutic foster home" as a family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency and in compliance with licensing rules adopted by the Commission.

The act became effective May 24, 2001. (WGR)

## **Database on Psychotropic Meds/Children**

S.L. 2001-124 (SB 542). See **Health and Human Services**.

## **Juvenile Justice Under Corrections Oversight**

S.L. 2001-138 (SB 67). See **Criminal Law and Procedure**.

## **Amend Adoption Laws**

S.L. 2001-150 (SB 499) addresses issues that have arisen since the adoption law was completely revised in 1995. This act makes the following changes:

- Defines "agency identified adoption" as a placement where an agency has agreed to place the minor with an adoptive parent selected by the parent or guardian.
- Changes the number of months required for the completion or updating of a required preplacement assessment from twelve to eighteen.
- Requires that an adoption petition have attached to it a certificate of service proving that the birth parents received a copy of the preplacement assessment in a private adoption, and proof of the consent to release identifying information prior to an agency adoption.
- Clarifies that in an agency adoption where the parent or possible parent is actually known, that known parent or possible parent can be given notice of the adoption and is

- required to defend his or her parental rights, if there are any, directly in the adoption proceeding itself.
- Requires the adopting parents to file with the court a certificate of service certifying that they gave the birth parents a preplacement assessment.
  - Requires the court to find in its adoption order that a certificate of service has been filed in the case proving that, in a private adoption, the adopting parents gave the birth parents a copy of the preplacement assessment.
  - Allows, but does not require, the agency preparing a preplacement assessment to delete from the assessment detailed financial information and private information concerning extended family members.
  - Requires adoption agencies to explain to birth parents and adopting parents any agency procedures for sharing information between birth parents and adopting parents and for giving birth parents a voice in selecting adopting parents.
  - Requires agencies that have agreed to place the child with prospective adoptive parents selected by the birth parents to place the child with those adoptive parents when a favorable preplacement assessment has been prepared.
  - Makes the period within which consent to an adoption or relinquishment to an adoption agency may be revoked seven days in all cases.
  - Allows for the release of identifying information between birth parents and adopting parents in an agency adoption, but only if the parties agree to do so before the adoption.
  - Allows a prospective adopting parent to advertise in a periodical or newspaper, or on radio, television, cable television, or the Internet, that they desire to adopt.
    - Applies only to a person with a current completed preplacement assessment finding the person suitable to adopt.
    - Advertisement must state that the person received a favorable assessment, identify the agency that completed the assessment, and identify the date the assessment was completed.

The act became effective November 1, 2001. Provisions regarding the certificate of service that proves the birth parents received a copy of the preplacement assessment and provisions regarding the sharing of information between adoptive parents and birth parents apply to adoptions in which the petition is filed on or after that date, provisions regarding deletion of financial information and information about extended family members in assessments apply to assessments prepared on or after that date, provisions regarding revocation of consents and relinquishments apply to consents and relinquishments executed on or after that date, and the provision regarding advertising applies to advertising published on or after that date. (WGR)

## Grandparents as Supervising Drivers

S.L. 2001-194 (HB 78). See **Transportation**.

## Children's Welfare

S.L. 2001-208 (HB 375), as amended by S.L. 2001-487, Sec. 101 (HB 338, Sec. 101), makes various changes to the statutes governing child welfare. The changes include:

- **Clarifying Changes – Timing Issues.** The act sets forth time constraints in which a child protective services juvenile court order must be reduced to writing, signed by the judge, and filed with the Clerk of Clerk, in most situations granting 30 days from entry of the order.
- **Clarifying Changes – Other.** The act clarifies and amends the newly codified Chapter 7B in the following manner:
  - Service of Summons. Current law requires that a summons in an abuse, neglect, or dependency action be served on the parent, guardian, custodian, or caretaker of the

juvenile. The abuse/neglect/dependency statute is silent as to whether it is appropriate to serve the parent of the juvenile if the parent is a minor. The act clarifies that the minor parent is to be served with the summons in an abuse/neglect/dependency petition.

- Title IV-E Funding. Federal law requires that in order to receive federal foster care (Title IV-E) funds, there must be a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. The act requires that a court must find that it is in the juvenile's best interest not to continue in the juvenile's own home when setting forth the dispositional alternatives for undisciplined and delinquent juveniles, thereby accessing Title IV-E funds to help support the juvenile.
- Access to Juvenile Records. When the juvenile code was recodified, the provision describing who may have access to a juvenile's records without a court order was left out. The act adds a statute governing who may access a juvenile court file: the juvenile (even when the juvenile reaches majority), the guardian ad litem, the county DSS, and the juvenile's parent, guardian, or custodian, or the attorney for the juvenile or the juvenile's parent, guardian, or custodian.
- **Changes To The Adoption Statutes.**
  - Transmittal of Adoption Records. The act allows that while original petition and final decree documents are to be maintained in the clerk's records, adoption proceeding documents may be sent within 10 days after the decree of adoption is entered or 10 days after the final disposition of an appeal rather immediately after being filed with the county clerk of court.
  - Adult Adoption/Notice. Prior to S.L. 2001-208, in the case of an adult adoption, in addition to the persons who are required to be notified in all adoptions, notice of the petition for adoption must be served on any adult children of the prospective adoptive parent; any parent of the adult adoptee; the spouse of the adult adoptee; and any adult child of the adult adoptee. The act changes that so notice would no longer have to be served on the parent of the adult adoptee if the court finds good cause not to do so.
  - Certificate of Identification. Vital statistics law generally provides that when an adoption is finalized, the State Registrar prepares a new birth certificate that contains the name of the adoptee and adoptive parents. In the case of an adopted person born in a foreign country and residing in North Carolina at the time of application for a certificate, the State Registrar prepares a certificate of identification. The act changes State law by requiring the State Registrar to prepare a certificate of identification for any adopted person born in a foreign country and readopted in this State upon the receipt of a report of the adoption from the Division of Social Services, regardless of whether the adopted person is residing in this State at the time of the application for the certificate.
  - Affidavit of Parentage. Adoption law provides for the execution (the parent or guardian who placed the child) of an affidavit of parentage to assist the court in determining whether a direct placement is valid and all necessary consents have been obtained. The act permits a knowledgeable individual to provide the information in the affidavit if the parent or guardian is not available. Additionally, in the case of an agency placement, the requirement that the agency must obtain the affidavit of parentage is eliminated if the agency has obtained legal and physical custody of a child by a court order terminating the parental rights of a parent or guardian. The court order on termination of the parental rights contains the information set forth in the affidavit or parentage.
  - Revocation of Relinquishment. Current law requires that a relinquishment of a minor for adoption must state that the individual voluntarily consents to the permanent transfer of legal and physical custody of the minor to the adoption agency for the

purposes of adoption, and either (a) the placement of the minor for adoption with a prospective adoptive parent selected by the agency, or (b) the placement of the minor for adoption with a prospective adoptive parent selected by the agency and agreed upon by the individual executing the relinquishment. If the relinquishor parent stated that the relinquishment was for an adoption by a specific prospective adoptive parent named or described in the relinquishment and such adoption is not completed, then the relinquishor parent has the ability to revoke the relinquishment. The act provides that the relinquishor parent's time to revoke is ten (10) days from the agency's notice, inclusive of weekends and holidays, and must be in writing. The change also provides that if the agency cannot locate the parent and/or if the parent does not revoke the relinquishment within the ten-day time period, then the agency may place the child for adoption with a prospective adoptive parent selected by the agency.

- **Substantive Changes – Termination of Parental Rights (TPR).**
  - Grounds for Termination. Two separate grounds for TPR are amended:
    - Willful abandonment. Termination may now be granted upon a showing that the parent has willfully left the child in foster care or other placement outside the home for a total more than 12 months.
    - Violence in the home by the parent. The act clarifies that the petitioner has the responsibility of proving that the parent has committed murder or voluntary manslaughter of another child of the parent or a child residing in the parent's home; or has aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child, another child of the parent or a child residing in the parent's home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent or a child residing in the parent's home.
  - Right to Appeal. G.S. 7B-1001 is amended to require any notice of appeal to the Court of Appeals must be in writing, thereby conforming the TPR statutes to the Rules of Appellate procedure, which govern appeals to the Court of Appeals.
  - Appeals; Modification of order after Affirmation. The act also clarifies that the juvenile acting through the juvenile's guardian ad litem, if one has been appointed, may appeal the order of adjudication or the order of disposition, provided the appeal is made in writing within 10 days after entry of the order.
  - Disposition pending appeal. It is made clear that the judge has the authority, but is not required, to place the juvenile with the parent or guardian of the juvenile pending the disposition of an appeal.
  - Issuance of Summons. The act clarifies that the juvenile, no matter what age, is served with the summons and petition in a TPR action. Additionally, the act requires that the papers directed to the juvenile must be served upon the juvenile's guardian *ad litem*, if one has been appointed.
- **Substantive Changes – Other.**
  - Right to Counsel. The act amends current statute by adding that a guardian ad litem will be appointed to represent a parent if the parent is a minor or where it is alleged that the juvenile is a dependent juvenile because the parent is incapacitated because of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition in addition to appointment when abuse or neglect is alleged.
  - Court Authority over Parents. The act expands the authority of the court over the parents in a child protective services case to permit the court to order the parents to attend and participate in parental responsibility classes, provide transportation to the juvenile to keep appointments for treatments, and to take appropriate steps to remedy conditions in the home that led to the juvenile's adjudication. Additionally, the act provides that the parent may be found in criminal contempt for failure to

comply (in addition to the current civil contempt remedy) and specifically sets forth the procedures to govern the contempt proceedings.

- Visitation Plan. The act provides that the director of the county Department of Social Services may make a good faith determination that a court ordered visitation plan is not in the juvenile's best interest (because, for example, the juvenile is being abused during the visitation), then the director can temporarily suspend all or part of the visitation plan until further review by the court.
- Permanency Planning. Prior to this act, when a juvenile has been in DSS custody and has been placed outside the home for 15 of the most recent 22 months, the court had to order the director of DSS to initiate a proceeding to terminate parental rights. The act changes that by reducing the time period from 15 to 12 months and by requiring the director of DSS to automatically initiate TPR proceedings, unless the court finds it is not in the juvenile's best interests.
- Voluntary Placement Agreements (VPA). Previously, when juveniles were voluntarily placed in foster care, the court reviewed the initial placement within 180 days after the placement and held reviews thereafter whenever the court found it to be appropriate. Juveniles placed voluntarily in foster care could not remain in foster care for more than 12 months without the filing of a petition alleging abuse, neglect, or dependency. The act changes that by shortening the time period within which the initial review hearing is to be held to 90 days after placement and mandating that an additional review hearing be held at least every 90 days thereafter. Further, the time period a juvenile may remain in foster care under a voluntary placement without filing a petition was shortened to 6 months.
- Inquiry as to Paternity. The act adds a requirement that the court inquire as to whether paternity is at issue and if so, what efforts are being undertaken to establish paternity when conducting the nonsecure custody hearing held within seven days of the filing of a petition for custody due to abuse, neglect or dependency.

The act became effective January 1, 2002, and applies to actions commenced on or after that date. (EC)

## Child Support

S.L. 2001-237 (HB 377) makes various changes to the statutes governing the establishment and enforcement of child support orders by the Department of Social Services.

The changes include:

- Clarifying And Technical Changes. *(Effective when it becomes law)*
  - **Affidavit of Parentage.** The act changes the name of the forms used to acknowledge paternity to an "Affidavit of Parentage."
  - **Technical Corrections.** During the 1999 Session of the General Assembly, an incorrect citation was used in language enacting a new subsection. The act corrects the citation, and recodifies the new subsection in the appropriate place in the section. It also amends the new subsection to include the ability to admit into evidence the Employee Verification during a hearing to enforce a child support order.
  - **Admissibility of Payment Records.** The act clarifies that the payment record maintained by the Centralized Collections Office is admissible in a child support action, and that the IV-D agent is qualified to authenticate this record for the court.
- Substantive Changes. *(Effective when it becomes law, except as noted.)*
  - **Require responsible parents to perform a job search.** The act provides the ability for the court to require a job search or participation in work activities when the court is establishing an order for child support, the same as the court can now require when enforcing a child support order.



- **Allow for periodic payments on child support judgments.** An arrearage owed for failure to pay child support may be reduced to a civil judgment, and enforced as any other civil judgment. The act allows the court to set periodic payment provisions on that civil judgment, and failure to comply with the periodic payment provisions as ordered by the court can be enforced by action for civil or criminal contempt.
- **Change of Service Method.** A IV-D agency is required to follow Rule 4 of the Rules of Civil Procedure when serving a notice of income wage withholding on an employer, which addresses service of the summons in a civil action. Typically, the IV-D agency used certified mail for this service. The act provides that the notice to implement income wage withholding can be served in accordance with Rule 5 of the Rules of Civil Procedure, which means service can be completed by placing the notice to implement income wage withholding in a properly addressed wrapper in a post office or official depository under exclusive care and custody of the United States Postal Service.
- **National Medical Support Notice.** The act implements the federal requirements under the final regulations implementing the 1988 changes to the Social Security Act with respect to Child Support (P.L. 105-200). The National Medical Support Notice is a federally required form that the IV-D agency must serve on the employer of a non-custodial parent when the non-custodial parent is court ordered to provide health insurance for the child or children covered under the child support order (42 USC 1396g-1 and 29 CFR Part 2590). Upon receiving the Notice, the employer is required to transfer the Notice to the health insurer or health care plan administrator unless:
  - The employer does not maintain or contribute to plans providing dependent or family health insurance.
  - The employee is not eligible for a family health insurance plan maintained by the employer or to which the employer contributes.
  - The employer no longer employs the employee.
  - Withholding limitations prevent the employer from withholding the amount required to obtain insurance. (*Effective October 1, 2001.*)

Once the Notice is transferred to the health insurer or health care plan administrator, the health insurer or health care plan administrator must enroll the child or children, notify the employer of the amount to withhold, and notify the employer of any applicable enrollment waiting periods. (*Effective July 1, 2002.*) If the employer, the health insurer, or the health care plan administrator does not comply with the provisions, they can be held liable for a civil penalty and are subject to a civil suit for reasonable damages. (EC)

## Child Bicycle Safety Act

S.L. 2001-268 (HB 63) makes several legislative findings regarding injuries to children in bicycle accidents and the effectiveness of helmets and restraining seats, and states that the act's purpose is to reduce the incidence of disability and death resulting from injuries incurred in bicycling accidents.

The act creates the following requirements relating to bicycle safety:

- Any person under the age of 16 must wear a helmet when operating or riding on a bicycle.
- All bicycle passengers who weigh less than 40 pounds, or who are less than 40 inches tall, must be seated in a separate restraining seat, and all other passengers must be seated alone on a saddle seat.
- All bicycle passengers must be able to maintain an erect, seated position on the bicycle.

It is unlawful for any parent or legal guardian of a person below the age of 16 to knowingly permit such a person to operate or be a passenger on a bicycle in violation of these requirements. A violation of this act is an infraction and is punishable by a civil fine of up to \$10.00. For a first

offense, the court may waive the fine upon receipt of satisfactory proof that the person responsible has purchased or otherwise obtained a helmet or restraining seat and intends to use it when required.

The act became effective October 1, 2001. (WGR)

## **Infant Homicide Prevention Act**

S.L. 2001-291 (HB 275) decriminalizes the abandonment of an infant under certain circumstances. The act provides that a parent of an infant less than 7 days old may turn the child over to one of the following persons:

- A health care provider who is on duty or at a hospital or local health department;
- A law enforcement officer who is on duty or at a police station or sheriff's department;
- A department of social services worker who is on duty or at a local department of social services;
- An emergency medical technician who is on duty or at a fire station; or
- Any adult who willingly accepts the infant.

The act provides that the abandoning parent is not subject to prosecution for misdemeanor refusal to provide child support, felony abandonment, or misdemeanor child abuse for any acts or omissions related to the care of the abandoned infant. An abandoning parent who also commits felony child abuse may still be prosecuted, but if the infant was abandoned according to the provisions of this act, the abandonment may be treated as a mitigating factor in sentencing for a conviction involving the abandoned infant.

The act requires that the individuals specifically listed above take an abandoned infant into temporary custody, while any adult may, but is not required, to do so. Individuals taking an infant into temporary custody under the provisions of this bill must protect the health and well being of the infant and must immediately inform the department of social services or a local law enforcement agency. The individual may inquire as to the parents' identities and medical history, but the parent is not required to provide this information. In addition, individuals taking an infant into temporary custody under the provisions of this bill are immune from civil or criminal liability under the temporary custody provisions of this bill so long as the individual acted in good faith. However, the immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

When abandonment is alleged, the act requires that the Director of the Division of Social Services initiate an investigation immediately, take temporary custody of the juvenile, and secure an order of nonsecure custody. The Director must also request that law enforcement investigate through the North Carolina Center for Missing Persons and other resources as to whether or not the juvenile is a missing child. The act also allows a court to terminate parental rights when a parent voluntarily abandons an infant, under the provisions of this act, for at least 60 consecutive days immediately preceding the filing of the petition.

The act became effective July 19, 2001, and applies to acts committed on or after that date. (WGR)

## **Children in Voting Enclosures**

S.L. 2001-292 (HB 980). See **Constitution and Elections**.

## **School Assignment/Child in Pre-Adoptive Home**

S.L. 2001-303 (SB 836). See **Education**.

## **DSS/Indian Affairs Collaboration**

S.L. 2001-309 (HB 715) requires the Division of Social Services to collaborate with the Commission on Indian Affairs and the North Carolina Directors of Social Services Association to develop a process to establish a relationship between the Division of Social Services and the Indian tribes to enable: these tribes to receive reasonable notice of identified Indian children who are being placed in foster care or adoption or who otherwise enter the child protective services system; agreement on a process by which North Carolina Indians might be identified and recruited for purposes of becoming foster care and adoptive parents; agreement on a process by which the cultural, social, and historical perspective and significance associated with Indian life may be taught to appropriate child welfare workers and to foster and adoptive parents; identification or formation of Indian child welfare advocacy, placement and training entities with which the Department of Health and Human Services might contract or otherwise form partnerships; development of a valid and reliable process through which Indian children within the child welfare system can be identified; and identification of the appropriate roles for the State and Indian tribes, organizations and agencies to ensure successful means for securing the best interests of Indian children.

The act became effective July 27, 2001. (DJ, EC, TM)

## **No Drugs at Child Care Centers**

S.L. 2001-332 (SB 751) See **Criminal Law and Procedure**.

## **Equitable Distribution Clarification**

S.L. 2001-364 (HB 1084). See **Civil Law and Procedure**.

## **NC Health Choice**

S.L. 2001-424, Sec. 21.22 (SB 1005, Sec. 21.22). See **Health and Human Services**.

## **Special Needs Adoptions Incentive Fund**

S.L. 2001-424, Sec. 21.42 (SB 1005, Sec. 21.42) creates a Special Needs Adoptions Incentive Fund to provide financial assistance to facilitate the adoption of children with special needs residing in licensed foster care homes. These funds shall be matched by county funds. The Social Services Commission shall adopt rules to implement the provisions of this section. The Department of Health and Human Services is to report on the use of these funds no later than April 1, 2002, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective January 1, 2001. (AC)

## **Child Welfare System Pilots**

S.L. 2001-424, Sec. 21.46 (SB 1005, Sec. 21.46) directs the Department of Health and Human Services, working with local departments of social services, to develop a plan to implement an alternative response system when responding to suspected reports of child neglect in no fewer than two and no more than ten demonstration areas in the State. The Department may proceed to implement this pilot program if non-State funds are identified for that purpose.

This section became effective July 1, 2001. (AC)

## **Family Resource Centers**

S.L. 2001-424, Sec. 21.48 (SB 1005, Sec. 21.48) directs the Department of Health and Human Services (DHHS) to evaluate the use of all State and federal funds allocated to Family Resource Centers that primarily serve families with minor children. The evaluation will determine the effectiveness and efficiency of services provided by these family resource centers and will ensure that these centers provide similar core services. DHHS is to report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on May 1, 2002.

This section also amends G.S. 143B-152.15(b) regulating program evaluation of the Family Resource Center Grant Program, to require DHHS to report no later than December 1 of each year to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on the results of program evaluation.

This section became effective July 1, 2001. (AC)

## **Intensive Family Preservation Services Funding and Performance Enhancements**

S.L. 2001-424, Sec. 21.50 (SB 1005, Sec. 21.50) directs the Department of Health and Human Services (DHHS) to review the Intensive Family Preservation Services Program (IFPS) to enhance and implement initiatives that will increase the sustainability and effectiveness of the IFPS. This section requires any program or entity that receives State, federal, or other funding for the purposes of Intensive Family Preservation Services to provide information and data that will assist in the evaluation. DHHS is to establish performance-based funding protocol and will only provide funding to those programs and entities that provide the required information. DHHS is to make an interim report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by April 1, 2002, and an annual report not later than December 1 of each year of the biennium.

This section also amends the Family Preservation Act to delete the phased in language of the program and to eliminate the Advisory Committee on Family-Centered Services within the Department of Health and Human Services and make conforming amendments throughout the act. It further clarifies that the number of grants awarded and the level of funding of each grant is contingent upon funds appropriated for that purpose by the General Assembly.

This section became effective July 1, 2001. (AC)

## **Child Support Pilot Program/Enhanced Standards**

S.L. 2001-424, Sec. 21.53 (SB 1005, Sec. 21.53) directs the Department of Health and Human Services (DHHS) to develop and implement performance standards for each State and county child support enforcement office. DHHS is to monitor each office and publish an annual performance report on the statewide and local office performance of each child support office. DHHS is to submit a progress report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 15, 2001, and a final report no later than May 1, 2002.

This section became effective July 1, 2001. (AC)

## Comprehensive Treatment Services Program

S.L. 2001-424, Sec. 21.60 (SB 1005, Sec. 21.60), as amended by S.L. 2001-513, Sec. 17 (HB 231, Sec. 17) directs the Department of Health and Human Services (DHHS) to continue the Comprehensive Treatment Services Program which includes a full range of services for children requiring mental health services. The act clarifies that the Program includes both residential and non-residential services for children and youth at risk for out-of-home placement. The act also requires a Memorandum of Agreement between DHHS, the Department of Public Instruction and other affected state and local agencies prior to the allocation of any funds for the Program. DHHS must submit an interim report on December 1, 2001 and a final report by April 1, 2002 to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2001. (AC)

## Child Care Allocation Formula

S.L. 2001-424, Sec. 21.69 (SB 1005, Sec. 21.69) makes the following changes to Sec. 11.43 of S.L. 1999-237 (HB 168, Sec. 11.43), regarding the child care allocation formula:

- Authorizes the Department of Health and Human Services (DHHS) to allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families.
- Uses the mandatory thirty percent (30%) Smart Start subsidy allocation to constitute the base amount for each county's child care subsidy allocation.
- Does not include the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation when applying the formula established in Sec. 11.43 of S.L. 1999-237 to all noncategorical federal and State child care funds.
- Allows DHHS to reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families.
- Directs DHHS, in consultation with the North Carolina Partnership for Children, Inc., the North Carolina Association of County Commissioners, directors of county departments of social services, and representatives of private for-profit and not-for profit child care providers to study the current methodology and process used to allocate all child care subsidy voucher funds in order to assess its effectiveness in meeting the needs of low-income working families. DHHS is to report its findings to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by April 1, 2002.

This section became effective July 1, 2001. (AC)

## Child Care Subsidy Rates

S.L. 2001-424, Sec. 21.73 (SB 1005, Sec. 21.73) makes the following changes to Sec. 11.27 of S.L. 2000-67 (HB 1840, Sec. 11.27), which amended the allocation of child care subsidy rates:

- Repeals G.S. 110-109, which required the Department of Health and Human Services (DHHS) to conduct a statewide market rate study of child care facilities, every two years, and establish a market rate for each rated quality level for each age group within each county along with a corresponding statewide market rate.
- Repeals Subsection (d) of Sec. 11.27 of S.L. 2000-67, which required DHHS to conduct a one-time interim market rate study to be completed no later than April 1, 2002.

- Increases the percent of gross family income upon which fees for families who are required to share in the cost of care are established. Please see table below. (Effective October 1, 2001).

<u>Family Size</u>	<u>Previous Percent of Gross Family Income</u>	<u>Enacted Percent of Gross Family Income</u>
1-3	9%	10%
4-5	8%	9%
6 or more	7%	8%

- Authorizes religious-sponsored child care facilities and licensed child care centers and homes that are receiving a higher rate than the market rates that will be implemented in this section, to continue receiving that higher rate until September 30, 2002. (Effective October 1, 2001).
  - Reinserts the provision of payment rate qualifications for child care providers in counties that do not have at least seventy-five (75) children in each age group for center-based and home-based care and clarifies that such payment rates are to be set at the statewide or regional market rate.
  - Requires the Division of Child Development to calculate a statewide rate and regional market rates for each rated license level for each age category.
- The remainder of this section became effective July 1, 2001. (AC)

## Development of More at Four Pilot Program

S.L. 2001-424, Sec. 21.76B (SB 1005, Sec. 21.76B), as amended by S.L. 2001-487, Sec. 112 (HB 338, Sec. 112) appropriates \$6,456,500 in each year of the biennium to the Department of Health and Human Services (DHHS) to develop and implement, in consultation with the Department of Public Instruction (DPI), the "More at Four" voluntary prekindergarten pilot program for at-risk four-year-olds. DHHS and DPI are to establish the "More at Four" Pre-K Task Force to oversee development and implementation of the pilot program. The pilot shall be distributed geographically to ensure adequate representation of the diverse areas of the State. DHHS, DPI and the Task Force shall identify and make recommendations on the reallocation of funds from existing State and local programs providing prekindergarten related care and services.

The Department of Health and Human Services, the Department of Public Instruction, and the Task Force shall report by January 1, 2002 and May 1, 2002, to the Joint Legislative Commission on Governmental Operations, Joint Legislative Education Oversight Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Senate Appropriations Committee on Health and Human Services on the progress of complying with this section. A final report along with recommendations for changes or expansion of the program shall be presented to the 2003 General Assembly.

This section became effective July 1, 2001. (AC)

## Create Office of Education Services

S.L. 2001-424, Sec. 21.80 (SB 1005, Sec. 21.80) repeals G.S. 143B-146.22 regulating the authority of the Secretary of the Department of Health and Human Services (DHHS) to create the Division of Education Services to manage the Governor Morehead School and the three residential schools for the deaf. This section also dissolves the Division of Early Intervention and creates an Office of Education Services within DHHS to manage the Schools for the Deaf, the Governor Morehead School for the Blind, and their preschool components. The Office of Education Services is to improve student academic and postsecondary outcomes and strengthen collaborative relationships

with local education agencies and with the State Board of Education. DHHS shall make the necessary organization changes and budget adjustments specified by this section by October 1, 2001.

This section became effective July 1, 2001. (AC)

## **Closure of Central North Carolina School for the Deaf at Greensboro**

S.L. 2001-424, Sec. 21.81 (SB 1005, Sec. 21.81) amends various sections of Chapter 143B, the Executive Organization Act of 1973 to reflect the closure of the Central North Carolina School for the Deaf at Greensboro.

This section became effective July 1, 2001. (AC)

## **Residential Schools for the Deaf**

S.L. 2001-424, Sec. 21.82 (SB 1005, Sec. 21.82) directs the Department of Health and Human Services (DHHS) to assess the educational needs of the current students at the North Carolina School for the Deaf in Morganton and the Eastern North Carolina School for the Deaf in Wilson. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the Office of Education Services, and the Department of Public Instruction shall work together in the development of education plans for students and shall develop and prepare plans for those children who are seriously emotionally disturbed and place them in appropriate settings. DHHS shall report on or before March 15, 2002, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on complying with this section.

This section became effective July 1, 2001. (AC)

## **Preschool Programs for the Deaf**

S.L. 2001-424, Sec. 21.83 (SB 1005, Sec. 21.83) directs the Department of Health and Human Services (DHHS) to transition the children at the State-operated preschool programs for the deaf to other preschool services, after which, the State-operated preschool sites will cease operation. DHHS, the Division of Public Health, the Office of Education Services, the Division of Child Development, and the Department of Public Instruction shall develop a transition plan for the appropriate placement of the children located at these preschool sites.

This section became effective October 1, 2001. (AC)

## **Graduated Drivers License Change**

S.L. 2001-487, Sec. 51.5 (HB 338, Sec. 51.5). See **Transportation**.

## **Amend Stalking/Domestic Violence Laws**

S.L. 2001-518 (SB 346). See **Criminal Law and Procedure**.

## Major Pending Legislation

### **Abolish Alienation of Affection/Criminal Conversation**

HB 576 would abolish the common law torts of alienation of affections and criminal conversation. The bill has passed the House and is pending in the Senate. (WGR)

### **Increase Misdemeanor Child Abuse Penalty**

HB 904 would increase the penalty for a parent who inflicts physical injury, allows injury to be inflicted, or creates or allows to be created a substantial risk of physical injury on a child from a Class 1 misdemeanor to a Class A1 misdemeanor. The bill has passed the House and is pending in the Senate. (WGR)

### **Close Incest Loophole to Protect Minors**

HB 1276 would increase the penalty for incest to match the penalties for other sexual offenses that may be committed against minors, such as first-degree rape and statutory rape. It would also prevent any party to incest that is under the age of 16 from being prosecuted for the crime of incest, unless the parties were less than four years apart and the act was consensual.

The bill creates four possible penalties for incest depending on the age of the parties:

- If one party is under the age of 13 and the other party is at least four years older, the older party shall be guilty of a Class B1 felony. *If this act occurred between non-family members, it would be first-degree rape, which is punishable as a Class B1 felony.*
- If one party is 13, 14, or 15 years old and the other party is at least six years older, the older party shall be guilty of a Class B1 felony. *If this act occurred between non-family members, it would be "first-degree" statutory rape, which is punishable as a Class B1 felony.*
- If one party is 13, 14, or 15 years old and the other party is more than four but less than six years older, the older party shall be guilty of a Class C felony. *If this act occurred between non-family members, it would be "second-degree" statutory rape, which is punishable as a Class C felony.*
- If both parties are 16 years old or older or if the parties are less than four years apart in age and the act was consensual, both parties may be prosecuted for incest and are subject to a Class F felony.

The bill has passed the House and is pending in the Senate. (WGR)

## Studies

### **Legislative Research Commission**

#### **2001 Studies Bill**

S.L. 2001-491, Sec. 2.1(9) (SB 166, Sec. 2.1(9)) authorizes the Legislative Research Commission to study the following domestic violence issues:

- Child abuse and neglect in child care facilities.
- Confidentiality program for victims of domestic violence.



- Establishing a domestic violence fatality review team.  
The act became effective December 19, 2001. (SS)

*Chapter 5*  
*Civil Law and Procedure*

Brenda Carter (BC), Karen Cochrane-Brown (KCB), Frank Folger (FF), Bill Gilkeson (BG),  
Trina Griffin (TG), Robin Johnson (RJ), Esther Manheimer (EM), Wendy Graf Ray (WGR),  
Walker Reagan (WR), Steve Rose (SR), Susan Sitze (SS), Rick Zechini (RZ)  
and others (See references by initials on page 269 of this publication.)

**Enacted Legislation**

**Civil Procedure**

**Amend Rule 9(j) of the Rules of Civil Procedure**

S.L. 2001-121 (HB 434) amends the law that allows a judge under certain circumstances to extend the statute of limitations in medical malpractice claims by clarifying which judges are authorized to enter such orders. Prior law limited the authority to superior court judges of the county where the cause of action arose. This act resolves the problem where there is not a superior court judge of the county, or not a superior court judge of the county qualified to hear the matter. Also, because the county where the cause of action arises is not necessarily a county in which venue is proper, the act provides that the order be entered in a county where the lawsuit could be filed.

The act amends G.S. 1A-1, Rule 9(j) of the Rules of Civil Procedure to provide that a resident judge of the superior court for a judicial district in which venue is appropriate under G.S. 1-82 for a medical malpractice cause of action or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district, may allow a motion to extend the statute of limitations to file a complaint in a medical malpractice action.

The act became effective October 1, 2001 and applies to actions filed on or after that date.  
(WR)

**Extend Limitations for Some Intentional Torts**

S.L. 2001-175 (HB 665) extends the statute of limitations in civil actions for assault, battery, and false imprisonment from one year to three years. This act was prompted by recent North Carolina cases in which the Court of Appeals urged the General Assembly to examine the distinction between the one-year statute of limitations for intentional torts and the three-year statute of limitations for negligence. As a result of this legislation, a plaintiff who is the victim of an intentional tort has the same amount of time to file a lawsuit as a plaintiff who is the victim of a negligent act. However, the one-year statute of limitations for the intentional torts of libel and slander remains unchanged.

The act became effective October 1, 2001 and applies to claims arising on or after that date.  
(TG)

**Amend Certain Rules of Civil Procedure**

S.L. 2001-379 (HB 439), as amended by S.L. 2001-487, Sec. 107.5 (HB 338, Sec. 107.5), amends Rules 4(c), 4(j), 4(j1), 4(j2), 5(b), 28(c), 37(a), 46, 63 and 65(b) of the Rules of Civil Procedure.

The act amends Rule 4(c) to extend the time allowed for return of service of a summons from 30 days to 60 days.

The act amends Rule 4(j) to permit service of process by a designated delivery service, such as Airborne Express, DHL Worldwide Express, FedEx, and UPS, in a manner similar to service of process by certified mail through the US Postal Service. A delivery service designated under the act is one so designated by the US Treasury Secretary for IRS purposes.

The act amends Rule 5(b) to permit service of pleadings and papers on an attorney by fax. Time of confirmation of receipt of the fax determines the time of delivery and delivery must be by 5:00 p.m. to be considered delivered on that day.

The act amends Rule 28(c) to allow a videotaped deposition to be taken by an employee of the attorney if the deposition notice discloses the name of the employee and by whom he or she is employed, and the deposition is recorded by stenographic means by a non-disqualified person.

The act amends Rule 37(a) to provide that when an opposing party fails to respond to discovery, the party seeking discovery must certify in its motion to compel discovery that it has in good faith conferred or attempted to confer with the person failing to make discovery in an effort to secure the information or material without court action.

The act clarifies Rule 46 by including pretrial rulings and interlocutory orders with other rulings and orders by the trial court that do not have to be formally objected to in order to preserve the objection. This provision does not apply to rulings and orders concerning the admissibility of evidence. This section also repeals Rule 46(c) to eliminate the conflict with Rule 10(b)(2) of the Rules of Appellate Procedure that requires formal objection to jury instructions in order to preserve the exception on appeal.

The act amends Rule 63 to expand circumstances for the substitution of a judge after a verdict is returned or a trial is concluded. In addition to authorizing the substitution for a judge who is disabled or deceased, this section authorizes substitution upon a judge's resignation, retirement, expiration of term of office, removal from office, or for any other reason the judge is unable to perform his or her duties. This section also clarifies that the powers of the substitute judge apply to entries of judgment.

The act amends Rule 65(b) to require that an attorney seeking a temporary restraining order (TRO) certify the efforts, if any, that have been made to give prior notice of the request for a TRO to the adverse party or the adverse party's attorney, and the reasons why the notice should not be required.

The amendment to Rule 5(b) became effective October 1, 2001 and applies to actions filed before, on or after that date. The amendment to Rule 63 became effective August 18, 2001 and applies to actions pending on or after that date. The remainder of the act became effective October 1, 2001 and applies to actions filed on or after that date. (WR)

## Unnecessary Filing of Briefs

S.L. 2001-388 (SB 951) amends Rule 5 of the Rules of Civil Procedure to prohibit the filing, with the clerk of superior court, briefs and memorandum that are provided to the court, unless the court orders the filing.

The act also eliminates, in a civil action, the need to file a cover sheet with papers filed subsequent to the initial filing if the document itself contains specific information summarizing the critical elements of the filing. In order for the exemption to apply, the document must include:

- The caption on the first page.
- The name, address, and telephone number of the attorney or party filing the document.
- A designation of the party for whom the document is filed, if filed by an attorney.
- The names and designations of each other party to the action.
- The Administrative Office of the Court code(s), set forth on the first page of the document next to the title.
- The signature of the attorney or party filing the document.

The part of the act prohibiting filings of briefs and memoranda became effective August 6, 2001. The part of the act exempting certain cover sheet filings became effective October 1, 2001. (FF)

## **Domestic**

### **Settlement Procedures in District Court Actions**

S.L. 2001-320 (HB 668), as amended by S.L. 2001-487, Sec. 39 (HB 338, Sec. 39), repeals G.S. 7A-38.4, a pilot program providing for mediation of certain cases in district court, and makes the program permanent by the enactment of G.S. 7A-38.4A. The act establishes permanent authorization for mediation settlement procedures in any pending action in the district court involving equitable distribution, alimony, child support, post-separation support, or claims arising out of contracts and releases between husband and wife, separation agreements or premarital agreements. The language in the act is identical to that which was in the legislation establishing the pilot program. The statute envisions mediation as an informal process conducted by a mediator with the objective of helping parties voluntarily settle their disputes.

The act became effective October 1, 2001, with the exception of the authority for the Supreme Court to adopt rules to implement the act. That part of the act became effective July 1, 2001. (SR)

### **Equitable Distribution Clarification**

S.L. 2001-364 (HB 1084) clarifies that an action for equitable distribution of property between parties does not abate upon the death of one of the parties. This issue had not been specifically addressed in the General Statutes prior to the enactment of this provision. The act provides that, when one of the parties to an equitable distribution action dies before an order is entered, the court must consider any property that has passed to the surviving spouse as a result of the death of a spouse as a factor in the equitable distribution action. The act amends the law that sets out the amount of property that would pass to a surviving spouse who takes upon intestacy, or a surviving spouse who claims an elective share, by reducing the amount by the value of any equitable distribution of property awarded to the surviving spouse.

The act became effective August 10, 2001, and applies to actions pending or filed on or after that date. (WGR)

## **Evidence**

### **Psychological Associates and Clinical Social Workers Testimony**

S.L. 2001-152 (SB 739), as amended by S.L. 2001-487, Sec. 40(b) (HB 338, Sec. 40(b)), amends G.S. 8-53.6 to provide that a licensed psychological associate or licensed clinical social worker that provides marital counseling is not competent to testify as to any information acquired while rendering the marital counseling in a separation, divorce, or alimony action involving the parties who obtained the marital counseling. When G.S. 8-53.6 was originally enacted in 1983, clinical social workers were not licensed by the State. Since that time, the State began licensing clinical social workers, and both licensed clinical social workers and licensed psychological associates provide counseling to persons experiencing marital problems. G.S. 8-53.6 had previously applied only to licensed physicians, licensed psychologists, and certified marital family therapists. The act also changes the term "certified marital family therapists" to "licensed marriage and family therapist" to

conform to the recent licensure of marriage and family therapists. In addition, the act makes technical changes to some of the references to the divorce and alimony statutes in G.S. 8-53.6 that have been repealed and replaced since G.S. 8-53.6 was originally enacted.

The act became effective October 1, 2001. Effective December 6, 2001, S.L. 2001-487, Sec. 40(b) (HB 338, Sec. 40(b)) makes a technical correction to G.S. 8-53.7 to make the general social worker testimonial privilege applicable to licensed clinical social workers. (RZ)

## **Testimonial Privilege for Violence Victims**

S.L. 2001-277 (HB 643) establishes a qualified testimonial privilege for communications made to an agent of a rape crisis center or a domestic violence program during the provision of services.

The privilege applies to the following individuals:

- Domestic violence victims who seek advice, counseling or other services for mental, emotional or physical injuries suffered as a result of domestic violence.
- Persons who have a significant relationship with a domestic violence victim and seek services for themselves as a result of the domestic violence.
- Sexual assault victims who seek advice, counseling or other services as a result of injuries suffered from the assault.
- Persons who have a significant relationship with a sexual assault victim and seek services for themselves as a result of the sexual assault.

The privilege prevents an agent of a domestic violence program or rape crisis center, who has provided services to a victim, from being required to disclose information acquired during the provision of services that was necessary to enable the agent to render services. However, the victim may waive the privilege in open court, and the privilege terminates upon the death of the victim.

The privilege established by this act is qualified. Any resident or presiding judge in the district in which the action is pending is required to compel disclosure if the court finds, by a preponderance of the evidence, a good faith, specific, and reasonable basis for believing that:

- The records or testimony sought contain information that is relevant and material to factual issues to be determined in a civil proceeding, or is relevant, material and exculpatory on the issue of guilt, degree of guilt, or sentencing in a criminal proceeding for the offense charged or any lesser included offense;
- The evidence is not sought merely for character impeachment purposes; and
- The evidence sought is not merely cumulative of other evidence or information available or already obtained by the party seeking disclosure.

If the court finds that a sufficient showing has been made, it is required to order that the records be produced under seal. The court may then examine the records and allow disclosure of portions that contain information that are subject to disclosure under this provision. After all appeals are exhausted, the records must be returned to the center, unless otherwise ordered by the court.

The act became effective December 1, 2001, and applies to all communications made on or after that date. (WGR)

## **Liability**

### **Limit Liability of Landowner of Watershed Properties**

S.L. 2001-272 (HB 983) limits the liability of owners of land associated with a watershed improvement project for injuries to individuals who enter the land for educational and recreational purposes.

Generally, landowners owe a duty to lawful visitors to exercise reasonable care in the maintenance of their premises, but to trespassers, they only owe a duty to refrain from wanton or willful infliction of injury. This act provides that an owner of land associated with a watershed

improvement project only owes the lesser duty owed to trespassers to individuals entering the property by invitation or permission, free of charge, for educational or recreational purposes. The intent is to encourage landowners to make these areas available to the public.

This act also clarifies that the doctrine of attractive nuisance still applies and requires the owner to inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge.

The act became effective October 1, 2001, and applies to all causes of action arising on or after that date. (WGR)

## **Application of Tort Claims Act to Bus Drivers**

S.L. 2001-424, Sec. 6.18 (SB 1005, Sec. 6.18) amends G.S. 143-300.1, Claims Against County and City Boards of Education for Accidents Involving School Buses or School Transportation Service Vehicles, to require the Attorney General to refuse to defend the employee or former employee if the Attorney General finds one of the following:

- The act or omission was not within the scope and course of his employment as a State employee.
- The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part.
- Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee.
- Defense of the action or proceeding would not be in the best interests of the State.

This makes the statute consistent with the statute governing defense of other state employees, G.S. 143-300.4.

This section became effective July 1, 2001. (EC)

## **Miscellaneous**

### **Notary Validation**

S.L. 2001-154 (HB 700). See **State Government**.

### **Action on Construction Payment Bond**

S.L. 2001-177 (HB 1053), as amended by S.L. 2001-487, Sec. 100 (HB 338, Sec. 100). See **Commercial Law**.

### **Judicial & Execution Sales/Revise Procedure**

S.L. 2001-271 (SB 681) revises the resale procedures for judicial and execution sales of real property. It provides that a sale could be upset by subsequent upset bids filed within 10 days of the report of sale or the prior upset bid, until the price for the property is no longer raised. This procedure would eliminate the need for most resales and the need to readvertise the sale of the property. A court may still order a resale for good cause.

The legislation also shortens the time required for notice of a sale. The time period for posting notice is shortened from 30 days to 20 days. The time period for publication of the newspaper notice is shortened from four successive weeks to two successive weeks. These notice requirements would also apply to any resales.

The act became effective January 1, 2002, and applies to judicial sales and execution sales that were originally ordered after that date. (JH)

## **Soil and Water Employee Judgments**

S.L. 2001-300 (HB 968). See **Local Government**.

## **Amend Physicians' Liens Statutes**

S.L. 2001-377 (SB 780), as amended by S.L. 2001-487, Sec. 59 (HB 338, Sec. 59), eliminates the requirement that a medical provider file with the clerk of court notice of a lien on the proceeds of any recovery a patient may receive as a result of a personal injury claim. Under prior law, the medical provider must file this notice within 30 days of the filing of that personal injury lawsuit. This act substitutes a requirement that the medical provider give notice to the patient's attorney at the time the medical provider provides to the patient's attorney the medical records and expenses necessary to pursue the lawsuit. Once a lien is properly perfected (and once any dispute concerning the amount of the medical bills is resolved), the patient's attorney is required to disburse the proceeds of the lawsuit toward the medical lien despite instructions by the patient to the contrary.

The act became effective October 1, 2001, and applies to liens perfected on or after that date. (RJ)

## **Legal Services Funding Through State Bar**

S.L. 2001-424, Sec. 22.14 (SB 1005, Sec. 22.14) dedicates a portion of court costs to provide access to civil justice. One dollar and five cents (\$1.05) of each fee collected for court costs in criminal actions, civil actions, special proceedings, and administration of estates will be transmitted to the North Carolina State Bar. The State Bar will then allocate the funds directly to each of five geographically based field programs for provision of access to legal representation for indigent persons in certain kinds of civil matters. The programs are required to keep appropriate records and make periodic reports to the State Bar. The allocation became effective January 1, 2002, and applies to fees assessed or paid on or after that date. (BC)

## **Openness of Court Records and Proceedings and Other Governmental Documents**

S.L. 2001-516 (HB 1284) establishes civil procedures for asserting a right of access to a civil judicial proceeding or judicial record when the judicial proceeding has been or is to be, held in closed session, or the document considered by the court has been sealed. This process, different from a right of intervention under Rule 24 of the Rules of Civil Procedure, allows a party who seeks to assert a right of access to file a motion in an existing lawsuit to be heard on the right of access. The act specifically allows a party to the lawsuit to submit a document or proffer testimony it is seeking to have sealed without making the document or testimony public. Appeal of an order on a motion for access may be immediately appealed as an interlocutory appeal, but unless a stay is granted, the underlying lawsuit may continue. If the motion denying access is reversed on appeal, the sole remedy available to the appellate court is to remand the case for retrial. The party that tendered the document or testimony under seal may elect to withdraw the sealed information and not have it considered at a rehearing, and therefore not public. The act does not grant a right of access to documents or court records that are otherwise closed as a matter of law. There is a \$20 filing fee for this motion.

The act amends Chapter 132, Public Records, by adding a new section to exclude from the definition of public records specific details of public security plans and arrangements and detailed plans and drawings of public buildings and infrastructure facilities. Information related to the general adoption of such plans and budgetary decisions related to the plans and public buildings shall remain as public records. By virtue of this exception, a public body could consider this information in closed session but votes for the general adoption of the plans or budget would be in open session.

The act amends the law governing the administration of the State Employees Health Plan to provide that reimbursement rates or other terms of consideration of any contract between the Plan and medical providers and pharmacy benefit managers are not public record for a period of 30 months from the expiration of the contract. The Plan is permitted to share the information with other State agencies necessary for the administration of the Plan.

The act amends the law governing the confidentiality of competitive health care information in contracts involving public hospitals and public hospital authorities. The act amends G.S. 131E-97.3 by adding a process for the determination of what information constitutes competitive health care information. A person who challenges a public hospital's decision to withhold contract information it believes constitutes confidential health care information can ask the court to review the contract in camera and determine what is confidential health care information.

The portions of the act concerning proceedings for open court records and proceedings became effective January 1, 2002 and apply to records filed and proceedings commenced or pending on or after that date. The changes regarding what is public record became effective January 4, 2002 and apply to public records in existence on or after that date. The remainder of the act became effective January 4, 2002. (WR)

## **Major Pending Legislation**

### **Substitute Letter of Credit for Surety Bond**

HB 1099 would amend a number of statutes that currently require a surety bond to allow, as an alternative, the posting of an irrevocable letter of credit from a bank or savings institution insured by the Federal Deposit Insurance Corporation. The bill is pending in the Senate Judiciary I Committee. (RJ)

### **Appeals from Contempt**

HB 1139 would provide that the appeal from a finding of criminal contempt by a district court judge or a superior court judge is to the Court of Appeals, and appeal from a finding by a magistrate or a clerk of superior court is by hearing de novo before a superior court judge. The bill also would amend the law governing appeals of criminal contempt findings in workers' compensation cases before the Industrial Commission. Contempt can be found summarily by the Commission, or not summarily by proceeding in district court. The bill also would provide that appeal from a finding of criminal contempt in a workers' compensation action by either the Industrial Commission or by the district court is to the Court of Appeals. The bill is pending in the Senate Judiciary I Committee. (RJ)

### **En Banc Procedure**

SB 93 would authorize the Court of Appeals, upon a majority vote of the judges of the Court, to sit as a whole to hear a case on appeal, instead of just a three-judge panel. The bill would clarify that an appeal of right from the Court of Appeals to the Supreme Court based on a dissent to a decision only applies to decisions of three-judge panels and would clarify that an appeal from an en banc hearing in the Court of Appeals is by discretionary review only. The bill also would request the



Supreme Court to adopt rules of procedure for en banc hearings in the Court of Appeals. The bill is pending in the House Judiciary II Committee. (RJ)

## **Amend Rule 68 Offer of Judgment**

SB 416 would amend Rule 68 or the Rules of Civil Procedure – Offer of Judgment, to clearly exclude costs, interest, and statutorily authorized attorneys' fees in determining the amount of the judgment. The bill also proposes 1) that the cutoff period for making the offer of judgment be moved up from 10 days before trial to 30 days before trial; 2) that if the offer is made more than 60 days before trial, the adverse party has 30 days to accept the offer; otherwise the party has 10 days to accept; 3) that an offeree who refuses an offer and does no better at trial should not recover post-offer interest or attorneys' fees; and 4) that "lump sum" offers of judgment (those including costs, interest, or attorney fees) not be allowed. The bill is pending in the House Judiciary II Committee. (RJ)

## **Studies**

### **Legislative Research Commission**

#### **The 2001 Studies Bill**

#### **Governmental Tort Liability Issues**

S.L. 2001-491, Sec. 2.1(4)(h) (SB 166, Sec. 2.1(4)(h)) authorizes the Legislative Research Commission to study several issues related to local government tort liability and State tort liability, including:

- The distinction between governmental and proprietary functions.
- The feasibility of requiring all local government to pay tort claims up to a uniform minimum level, and if determined feasible, whether that level should be the same as under the State Tort Claims Act.
- The duty to defend government employees
- Possible methods for funding the State Excess Liability Fund.

If the LRC decides to study this issue, it may report its findings, together with recommended legislation, to the 2002 Regular Session of the 2001 General Assembly, or the 2003 General Assembly.

This section became effective on December 19, 2001. (TG)

#### **Construction Contracts Retainage Reform**

S.L. 2001-491, Sec. 2.1(4)(j) (SB 166, Sec. 2.1(4)(j)) authorizes the Legislative Research Commission (LRC) to study construction contract retainage reform.

This section became effective December 19, 2001. (RZ)

#### **Wrongful Death Proceeds Distribution**

S.L. 2001-491, Sec. 2.1(11)(a) (SB 166, Sec. 2.1(11)(a)) authorizes the Legislative Research Commission to study several issues related to the State law pertaining to the distribution of wrongful

death proceeds in certain cases involving minor children where the children's parents are living separate and apart or are divorced at the time of the death of the minor child, including:

- Whether the wrongful death statute needs revision to modify the distribution of wrongful death proceeds where the parents have provided unequal support for the child not rising to the level of willful abandonment.
- Whether circumstances other than willful abandonment should bar a parent from receiving all or part of his or her share of wrongful death proceeds resulting from the death of the minor child.
- Whether in situations involving the death of a minor child the courts should be authorized to make findings regarding the relationship of each beneficiary to the deceased to determine each beneficiary's equitable share of wrongful death proceeds.
- Whether the definition of "abandonment" under G.S. 31A-2, should be modified, or whether the distribution of a minor's estate under intestate succession should be based on equitable considerations.

If the LRC decides to study this issue, it may report its findings, together with recommended legislation, to the 2002 Regular Session of the 2001 General Assembly, or the 2003 General Assembly

This section became effective on December 19, 2001. (TG)

## Chapter 6 Commercial Law

Karen Cochrane-Brown (KCB), Trina Griffin (TG), Jeff Hudson (JH),  
Wendy Graf Ray (WGR), Walker Reagan (WR), Steve Rose (SR) and others  
(See references by initials on page 269 of this publication.)

### Enacted Legislation

#### **Expand N.C. Business Opportunities**

S.L. 2001-13 (SB 85) directs the N.C. Secretary of Commerce to convene a working group of interested parties knowledgeable in the different facets of doing business with the Department of Defense. The working group must include representatives from various government agencies and nonprofit organizations. Meetings must take place at least every quarter. The purpose of the working group is to increase business from federal contracts for North Carolina businesses and to utilize service members' transition from active duty in North Carolina. The goals of the working group include investigation of a single point registration for a North Carolina vendor; coordinating various agencies and organizations that help businesses obtain federal contracts; encouraging industry to meet governmental needs; creating a skills assessment program for transitioning Department of Defense personnel; and reviewing other issues the working group determines need to be addressed. The Department of Commerce may contract for consultant services. Progress of the working group must be reported to the Natural and Economical Resources Governmental Operations Subcommittee by April 2002 and January 2003.

The act became effective April 4, 2001 and expires June 30, 2005. (SR)

#### **Bill Lee Two-County Projects**

S.L. 2001-94 (SB 534) amends the William S. Lee Quality Jobs and Business Expansion Act to allow more flexibility in creating two-county industrial parks. In order to be eligible for the lower enterprise tier designation, the lower-tiered county in a two-county industrial park must contribute the lesser of one-half the costs of developing the park or the proportion of the costs of developing the park that is equal to the proportion of the park located in that county. Under prior law, a lower-tiered county was required to contribute at least one-half of the cost of developing the park.

The act became effective for taxable years beginning on or after January 1, 2001. (TG)

#### **Conform NC Law to Commodities Exchange Act**

S.L. 2001-110 (SB 882) amends the statute that prohibits contracts for "futures" in order to bring it into conformity with the Federal Commodities Exchange Act.

"Futures" are contracts for the purchase or sale of commodities, stocks, or bonds, in which it is not intended by the parties that the things agreed to be sold actually will be delivered. Rather, the intent is that, at a future date, the losing party will pay to the other the difference between the market price and the contract price. North Carolina passed a law in 1889 prohibiting certain contracts for "futures" in order to protect the public from establishments seemingly engaged in stock exchange or similar business but actually engaged in the registration of lots or wagers. However, more recent federal laws allow some transactions that could be interpreted as illegal and unenforceable under that law.

This act amends our law so that transactions that are valid and enforceable under the Federal Commodities Exchange Act are valid and enforceable under North Carolina law.

The act became effective October 1, 2001. (WGR)

## **Uniform Securities Regulation**

S.L. 2001-126 (SB 310). See **State Government**.

## **Repeal Obsolete Exchange/Marketplace Exempt**

S.L. 2001-149 (SB 274) makes a technical change to G.S. 78A-16 (Exempt securities) by repealing subdivision (8) and makes a conforming change to G.S. 78A-18(a) (Denial and revocation of exemptions). G.S. 78A-16 exempts certain securities from the requirement that they be registered with the Secretary of State. Subdivision (8) provides an exemption from this requirement for securities listed with major stock exchanges. Subdivision (15), which was added to the statute in 1990, provides a broader exemption that encompasses the securities that would be exempt under subdivision (8), so that subdivision (8) is no longer necessary.

The act became effective May 31, 2001. (JH)

## **Action on Construction Payment Bond**

S.L. 2001-177 (HB 1053), as amended by S.L. 2001-487, Sec. 100 (HB 338, Sec. 100), shortens from 180 days to 120 days the time period in which a claimant, who has a direct contractual relationship with a subcontractor, but not the prime contractor, may bring an action on a construction payment bond.

The act became effective October 1, 2001, and applies to labor and materials furnished on or after that date. (WGR)

## **Abolish Church Bond Dealer Restriction**

S.L. 2001-182 (SB 259) amends the law requiring a person to register as a securities dealer or salesman. The act eliminates the distinction between securities dealers specializing in church securities and other securities dealers by eliminating the restriction on registered securities dealers who specialize in church securities from only offering for sale securities of churches located in North Carolina.

The act became effective June 7, 2001. (WGR)

## **Rescission Offer Filing Procedure**

S.L. 2001-183 (SB 258) requires a person seeking to avoid civil liability for untrue statements made in connection with the sale of securities by offering a rescission of the sale and a repurchase or refund to file a copy of the rescission offer with the Secretary of State at least 10 days prior to the time the offer is extended.

The act became effective on October 1, 2001, and applies to rescission offers made on or after that date. (JH)

## **Reorganize Savings Institutions Division**

S.L. 2001-193 (HB 803) reorganizes the Saving Institution Division under the Office of the Commissioner of Banks. The Savings Institution Division has been a separate, independent division in the Department of Commerce, headed by the Administrator of Savings Institutions and the Savings Institutions Commission. This act transfers the Division and substitutes the State Banking Commissioner

for the Administrator. The act also merges the Savings Institutions Commission with the State Banking Commission by repealing the Savings Institutions Commission, expanding the State Banking Commission by seven members and having the current members of the savings Institution Commission serve for the remainder of their current terms plus nine months on the State Banking Commission so that the additional members' terms will correspond to the terms of current Banking Commission members. All substantive laws governing savings and loan associations and savings banks would remain the same and these changes would not affect or change how these savings institutions are currently regulated. The act also directs the Commissioner of Banks to study the regulation of banks and savings institutions and recommend a plan for the effective, efficient and equitable administration of these financial institutions. This act does not affect the regulation of State chartered credit unions.

The act became effective July 1, 2001. (KCB)

## **Community Development Exemption – AB**

S.L. 2001-197 (SB 277) adds the following to the list of conditions necessary to qualify for the exemption from securities registration for the sale of stock by a community development corporation:

- The corporation must be organized and operated in a way that principally promotes community, industrial, and agricultural development that confers a public benefit; and
- The corporation must not be organized and operated principally to generate a profit.

The act became effective October 1, 2001 and applies to offers or sales of securities occurring on or after that date. (TG)

## **Repeal Chapter 78B/Amend Securities Act**

S.L. 2001-201 (SB 795) repeals the Tender Offer Disclosure Act, Chapter 78B of the General Statutes, the principal provisions of which have been declared unenforceable and preempted by federal law. It also amends the North Carolina Securities Act, Chapter 78A of the General Statutes, as follows:

- Enacts a definition of "entity" to include corporations, joint-stock companies, limited liability companies, business trusts, limited partnerships, general partnerships, and other business forms where evidence of an ownership interest in the business is a security. This would recognize forms of business ownership other than the traditional forms of corporation and partnership.
- Adds "distributions" as methods for paying out interest in business forms to reflect the methods used for limited liability companies and partnerships.
- Removes mergers and judicially approved reorganizations from the total exemption from the North Carolina Securities Act. This would subject mergers and judicially approved reorganizations to the anti-fraud provisions of the Securities Act.
- Adds mergers and judicially approved reorganizations to the exemption from registering with the Secretary of State.
- Provides that the authority for anyone other than the board of directors or an officer of a public corporation to call a special meeting of stockholders must be contained in the corporation's articles of incorporation. Such a provision is ineffective if contained in the bylaws of a public corporation. This provision became effective June 14, 2001, and applies to any meetings of shareholders held or called to be held on or after that date.
- Excludes from the definition of control share acquisition an acquisition made pursuant to a transaction that complies with applicable law and is based on an agreement to which the covered corporation is a party. This provision became effective June 14, 2001.

Unless otherwise stated, the provisions of the act became effective on October 1, 2001. (JH)

## Governmental Security Interests Clarified

S.L. 2001-218 (SB 829) provides that most governmental security interests are not subject to Article 9 of the Uniform Commercial Code. The act amends G.S. 25-9-102(45) by expanding the definition of governmental unit to include separate entities created and controlled by local governments for the purpose of facilitating the financing of a governmental project. The act also amends G.S. 25-9-109 to create uniformity in the Article's application to governmental units. The act repeals other statutes so that all governmental security interests are treated the same. The act only affects security interests created by governmental units. The act clarifies that governmental security interests created prior to July 1, 2001, in compliance with then current law remain effective.

The act became effective July 1, 2001. (SR)

## Canadian Dealers/Salesman Registration

S.L. 2001-225 (SB 275) permits Canadian securities dealers and salespersons to sell securities in North Carolina in the following two limited situations:

- Dealings with a person from Canada who is temporarily residing in the State and with whom the Canadian dealer had a bona fide dealer-client relationship before the person came to the United States.
- Dealings with a person from Canada who is a resident of North Carolina (NC) and whose transactions are all in a self-directed tax advantage retirement plan (similar to an IRA) registered in Canada.

The act requires that dealers and salespersons register with the Secretary of State, agree to service of process in North Carolina, be members of a self-regulated organization or stock exchange in Canada, and pay fees required of other securities dealers and salespersons in NC. Canadian dealers and salespersons must be in good standing as securities professionals in the jurisdiction where they are authorized to do business. Canadian dealers and salespersons must also maintain their professional standing in Canada, submit to an examination of financial records relating to NC business when requested, and inform the State of any criminal or regulatory action taken against them.

The act also provides that Canadian dealers and salespersons will be subject to the fraudulent and other prohibited practices provisions of the Securities Act, which includes prohibitions on fraud, deception, untrue statements, misleading filings, unlawful representations, and market manipulation.

The act became effective June 15, 2001. (WGR)

## Define Time Stock Abandoned for Escheats

S.L. 2001-226 (SB 220) amends the statute that sets out the conditions under which stock and other equity interests are presumed abandoned. The act revises one of the conditions so that the interest is presumed abandoned five years after the date a second consecutive mailing from the holder is returned as unclaimed or undeliverable, rather than five years after the date of the second mailing, which mailing was returned as undeliverable, or the date the holder discontinued mailings.

The act became effective October 1, 2001. (WGR)

## UCC Article 9 Amendments

S.L. 2001-231 (SB 257) amends Article 9 of Chapter 25, the Uniform Commercial Code by authorizing the Secretary of State to refuse to file, or remove from the public record, bogus UCC financing statements or UCC financing statements intended for improper purposes. The act also clarifies the process for amending pre-effective-date financing statements and what financing statements can be filed with the registers of deeds after July 1, 2001.

Section 1 of the act provides that a UCC financing statement is not to be filed by the Secretary of State where the Secretary determines that the filing is not related to a valid security agreement or is intended only to hinder, harass, or otherwise wrongfully interfere with any person. Section 2 provides a method for the filing to be put on record by a sworn statement by the debtor that the filing is accurate even if the Secretary believes it to be bogus. Section 3 provides a method to remove from the public record a bogus filing that should have never been permitted to be filed. Section 4 establishes a process to appeal the refusal to file or cancellation of a wrongfully filed record by the Secretary by permitting a direct appeal to Superior Court in Wake County for immediate hearing without having to otherwise comply with the administrative procedures hearing process under the Administrative Procedures Act in Chapter 150 of the General Statutes. Section 5 makes it a Class 2 misdemeanor to knowingly file a false UCC statement or to file a UCC statement with intent to hinder, harass or otherwise wrongfully interfere with any person.

Section 6 clarifies that the termination of a UCC financing statement may be filed in the office where filed except that a termination shall not be filed in the register of deeds office unless it is a timber, as-extracted collateral, or fixture filing regardless of whether the law of North Carolina or the law of another state governs where the termination is to be filed. Section 7 clarifies that the registers of deeds are not to accept filings after June 30, 2001, even for financing statements on file as of that date, except for timber, as-extracted, and fixtures filings that will continued to be filed with the registers of deeds under the Revised Article 9.

Section 5 of the act became effective December 1, 2001 and applies to documents filed on or after that date. The remainder of the act became effective July 1, 2001. Sections 1 through 4 apply to documents filed on or after July 1, 2001. (WR)

## **Interstate Trust Business**

S.L. 2001-263 (SB 860) permits the formation and operation of non-bank trust companies and private family trust companies to engage solely in trust business without the necessity of conforming to all the requirements for a bank. The act simplifies trust company regulatory law under a separate regulatory Article requiring trust companies only to have to comply with the trust regulation provisions of the law, and not other banking regulations governing banking operations that trust companies do not engage in, while ensuring the same adequate capitalization and safety and soundness oversight by the Commissioner of Banks as was required under prior law. The act also authorizes trust business on an interstate basis by both trust companies and banks. The act modifies the residency requirements for bank directors.

Part 2 of the act enacts the Multistate Trust Institutions Act that allows North Carolina (NC) banks and trust companies to engage in a trust business on an interstate and international basis and allows banks and trust companies outside of NC to do business in NC provided their home states allow NC banks and trust companies to do trust business there. This Part includes provisions for the Commissioner to examine the out-of-state trust companies operations in NC and NC trust companies' operations out-of-state.

Part 3 enacts the State Trust Company Charter Act that sets out the requirements for chartering a state-chartered trust company. This Act includes minimum capitalization of \$2,000,000. As for banks, the Commissioner has authority to increase or decrease the minimum capitalization amount on specific grounds. This Act also defines permissible investments for trust companies' capital, requires at least 40% of the equity capital to be in liquid assets, and prohibits lending and lease financing. This Part also sets out special provisions applicable to private or family trust companies.

The act grants enforcement authority to the Commissioner consistent with the enforcement powers under the current banking laws and the Administrative Procedures Act and provides for the assessment of trust companies for the cost of supervision the same as for banks.

The act allows for a one-year transition period for existing trust companies chartered as banks to comply with the new law.

Section 8 of the act provides that not less than one-half of the directors of a bank incorporated in NC must be residents of this State or the state in which the bank has a branch. Under prior law, not less than one-half of the directors had to be residents of this State.

The act became effective July 1, 2001. (WR)

## **Amend Deposit Account Law**

S.L. 2001-267 (HB 1098) amends the laws governing trust accounts offered by financial institutions. The act changes the name of accounts from "Trust" to "Payable on Death (POD)", in each of the four Chapters of the General Statutes in which it appears, including Chapter 53 (Commercial Banks), Chapter 54 (Credit Unions), Chapter 54B (Savings and Loan Associations), and Chapter 54C (Savings Banks). The act also authorizes the accounts to be owned by more than one person, and allows the owner or owners to designate more than one beneficiary. During the owners' lifetimes, they own the account as joint tenants with the right of survivorship. At the death of the last owner, the account becomes an individual account belonging to the beneficiary, or if there are multiple beneficiaries, it becomes a joint account with the right of survivorship.

The act became effective October 1, 2001, and applies to accounts opened on or after that date. (KCB)

## **Collection Agency/Bail Bonds Amendments**

S.L. 2001-269 (HB 356) amends sections of Chapter 58 of the General Statutes relating to the regulation of collection agencies and bail bondsmen. The act eliminates some collection agency statement filings and increases the surety bond requirements for collection agencies. The act also amends sections regulating bail bondsmen licensing requirements, trust account requirements, and license renewal.

With regard to collection agencies, the act eliminates the need for office managers, sales representatives, and collectors to file annual statements with the Department of Insurance. The act increases the bonding requirements for collection agencies and requires nonresident agencies to post an additional bond to cover costs of the department in the event of bankruptcy. It makes other clarifying changes with regard to collection agencies.

With regard to bail bondsmen, it clarifies the licensure requirements, allows for shared trust accounts, requires certain statements to be filed with the clerk of court on forms furnished by the Administrative Office of the Courts, allows the Commissioner of Insurance to deny renewal or issuance of a license if there is a deficiency in the required security deposits, allows the Commissioner to examine the business records of licensees, and makes other clarifying changes.

The act became effective October 1, 2001, and applies to permits or licenses issued or renewed on or after that date. (SR)

## **Amend Investment Advisor Law – AB**

S.L. 2001-273 (SB 269) makes the following substantive changes to North Carolina securities regulation statutes:

- Changes the definition of "investment advisor representative" to include a person who has a place of business in the State and is an "investment advisor representative" as defined under federal law; or is not a "supervised person" (as defined under federal law) who offers investment advisory services on behalf of an adviser.
- Allows an investment advisor representative to be registered with more than one investment advisor for the purposes of offering investment advisory services on behalf of those investment advisors. If the investment advisor representative is registered with more than one investment advisor, he or she must be registered separately with each investment



advisor and disclose to each person solicited the terms of any compensation arrangement that is related to solicitation or referral activities.

- Requires an investment advisor representative and an investment advisor to file initial and renewal registrations or notice filings with the Investment Advisor Registration Depository (IARD) operated by the National Association of Securities Dealers, in addition to filing with the Administrator (the Secretary of State).
- Requires investment advisor representatives and investment advisors to pay the costs associated with processing the filings mentioned above.

This act became effective October 1, 2001, and applies to applications for initial or renewal registrations and notice filings filed on or after that date. (KCB)

## Real Estate/Travel Agent Fees Regulated

S.L. 2001-293 (SB 558). See **State Government**.

## Embalmers and Funeral Directors

S.L. 2001-294 (HB 440) was recommended by the North Carolina (NC) Board of Mortuary Science. The act clarifies that applicants seeking to be licensed for the practice of funeral directing or funeral service may attend a college approved by the Board of Mortuary Science or the American Board of Funeral Service Education. It sets out regulations regarding the transportation of dead human bodies and increases the penalty associated with the removal, suspension, or probationary status of a license to no more than \$5,000. The act imposes requirements for the disposition of a preneed funeral fund and the distribution of preneed trust proceeds. The act staggers the terms of public members of the Board of Mortuary Science. Finally, the act makes numerous technical and conforming changes, and the appointment of the three public members to the Board is changed from the Governor to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House.

The act became effective December 1, 2001. (SR)

## Revise Uniform Electronic Transactions Act

S.L. 2001-295 (SB 1023) amends North Carolina's Uniform Electronic Transactions Act (UETA) to bring it into conformity with the federal Electronic Signatures in Global and National Commerce Act. Both acts are designed to regulate electronic commerce. The act makes the following changes:

- It clarifies that the word "transaction" as used in UETA includes consumer transactions as well as business, commercial, or governmental affairs.
- It amends the section governing the scope of UETA by adding several types of transactions to which it does not apply:
  - Notice of the cancellation or termination of utility services.
  - Notice of default, acceleration, repossession, foreclosure or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual.
  - Notice of the cancellation or termination of health insurance or benefits, or life insurance or benefits, excluding annuities.
  - Notice of the recall of a product or material failure of a product that risks endangering health or safety.
  - Any document required to accompany the transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.
- It amends the section that provides when parties agree to conduct a transaction by electronic means, any law requiring written notice is satisfied if the information is provided in an electronic record capable of retention by the recipient. Specifically, it states that an

- electronic record does not meet the retention requirement if it cannot be accurately reproduced for later reference by all parties who are entitled to the contract or record.
- It amends the section that permits senders and recipients to agree to alternative methods of sending and receipt that are reasonable under the circumstances. The amendment provides that the "reasonable under the circumstances" requirement only applies to consumer transactions.
  - It makes clear that except for consumer transactions, an electronic record is "received" when it meets UETA specifications even if no individual is aware of its receipt.
  - It provides that in a consumer transaction in which a State statute, regulation, or rule of law requires that information relating to the transaction be provided to the consumer in writing, and the consumer uses electronic equipment provided by the seller, the consumer must receive a written copy of the transaction not in electronic form. It also provides that an oral communication or recording of an oral communication does not qualify as an electronic record.
  - It provides that if a consumer located in North Carolina enters into a consumer transaction that is created or documented by an electronic record, the transaction is deemed to have been entered into in North Carolina.
  - It adds a new section stating that North Carolina's enactment of UETA sets forth alternative procedures for electronic records consistent with the provisions of the federal Electronic Signatures in Global and National Commerce Act.
  - It prevents a company from trying to enforce the provisions of the Uniform Computer Information Transactions Act (UCITA) as enacted by another state, by inserting into contracts entered into by a North Carolina resident a choice of law provision for the law of a state that has passed UCITA. This section only remains in effect until the General Assembly enacts UCITA or a substantially similar law.
- This act became effective October 1, 2001. (TG)

## **Mortgage Amortization Chart Required**

S.L. 2001-340 (SB 815), as amended by S.L. 2001-413, Sec. 9 (HB 1070, Sec. 9) and S.L. 2001-487, Sec. 56 (HB 338, Sec. 56), adds a requirement to the mortgage law to require lenders of personal home loans to furnish the borrower within three days of application with standard information and examples prepared by the Commissioner of Banks of amortization of home loans reflecting various loan terms. For fixed rate permanent home loans, the act also requires that the lender furnish the borrower within three days of closing with an amortization schedule of the individual's actual loan. A home loan is a loan of less than \$300,000 secured by a first mortgage on a single-family dwelling by a natural person for personal, family or household purposes.

The act is effective July 1, 2002 and applies to loans applied for on or after that date. (WR)

## **Amend Farm Machinery Franchise Law**

S.L. 2001-343 (HB 1318) amends the farm machinery franchise law. The act makes changes in the law governing the termination of farm machinery franchise agreements, the duty of a supplier to repurchase inventory upon the termination of a franchise, and the warranty obligations of the supplier to the dealer. The act also adds law spelling out prohibited acts by a supplier and adds additional remedies available to a dealer in the event that a supplier refuses to repurchase inventory as required under the act.

The definitions in G.S. 66-180 are amended to include "good cause", defined to mean the failure of a dealer to comply with requirements imposed upon the dealer by an agreement if the requirements are not different from those imposed on other similarly situated dealers in the State. The definition of "inventory" is expanded to include construction equipment, consumer products, and outdoor power

equipment and the definition of "supplier" is expanded to include any successor to the original business that entered into an agreement with a dealer.

G.S. 66-182 is amended to require the supplier to give the dealer 90 days notice prior to terminating an agreement and gives the dealer 60 days to cure any defaults.

G.S. 66-183 is amended to allow a supplier's repurchase obligations to be offset against the dealer's debts to the supplier.

G.S. 66-184 amends the repurchase obligations of the supplier in the event the agreement is terminated to include the repurchasing of specialty parts and hardware, software and telecommunications equipment.

G.S. 66-185 is amended to add used equipment and equipment that is not a current model to the exceptions to the repurchase requirements.

G.S. 66-187 is amended to spell out in greater detail the supplier's obligation to pay the dealer for warranty work performed.

G.S. 66-187.1 is added as a new section to define prohibited acts by the supplier to include a prohibition on coercing purchases of items not ordered, conditioning sales of additional equipment on purchases of other items, preventing a dealer from buying from another supplier, and negatively impacting the contract for matters beyond the control of the dealer.

The act became effective October 1, 2001. (WR)

## **Amend Licensing Law for Selling Cars**

S.L. 2001-345 (HB 432) amends the law requiring a license for selling motor vehicles. It establishes civil penalties, in addition to existing criminal penalties, for violation of the Motor Vehicle Dealers and Manufacturers Licensing Law, by persons licensed and not licensed as a motor vehicle dealer. The act also requires used motor vehicle dealers to complete a licensing course before being licensed or having their existing license renewed.

Section 1 of the act authorizes DMV to impose a civil penalty of up to \$1000 against a licensed dealer, and \$5000 against an unlicensed person acting as a dealer, for violation of the dealer licensing law (Article 12 of Chapter 20), the odometer law (Article 15 of Chapter 20), or any other statute or rule relating to sale of vehicles, vehicle titling, or vehicle registration.

Section 2 adds a twelve-hour initial licensing course and a six-hour renewal licensing course requirement for used motor vehicle dealers. This requirement does not apply to used motor vehicle dealers engaged primarily in the business of the sale of salvage vehicles for insurers or to manufactured home dealers who comply with the continuing education requirements for a manufactured home dealer. The course requirements also do not apply to persons age 62 or older as of July 1, 2002 who apply for a renewal license. This section requires all individual applicants for a used motor vehicle dealer license to prove that the applicant and all salespersons of the dealer are 18 years of age or older, and requires the applicant to submit an application for a dealer license plate.

The act became effective July 1, 2001 and applies to violations and offenses committed on or after that date and licenses issued to used motor vehicle dealers on or after that date. (WR)

## **Consolidate Business Provisions**

S.L. 2001-358 (HB 385), as amended in S.L. 2001-387, Secs. 156, 157, 159, and 160-173 (SB 842, Secs. 156, 157, 159, and 160-173), and in S.L. 2001-487, Sec. 107, (HB 338, Sec. 107), amends the General Statutes to consolidate in one place various business law provisions relating to corporations, nonprofit corporations, limited liability companies, limited partnerships, and registered limited liability partnerships that either duplicate or closely track each other in Chapters 55, 55A, 57C, and 59. The provisions fall into three different categories dealing with filing requirements with the Secretary of State, requirements for business entity names, and basic requirements for maintaining a registered office and a registered agent, and substitution of service of process on the Secretary of State in the event of no registered agent.

The following substantive changes in the law are also made in the act:

- Recognition of the legitimacy of electronic filing of documents.
- Clarifies that a request for an expedited filing with the Secretary of State be made when the document is filed.
- Permits a registered limited liability partnership to reserve a name.
- Permits foreign limited partnerships and foreign limited liability partnerships to register their names in the State.
- Permits an entity that has registered a name to transfer the name to an existing domestic entity or to a foreign entity that is already authorized to transact business or conduct affairs in the State.

The act became effective October 1, 2001 and applies to documents submitted for filing on or after that date. (WR)

## Business Entity Changes

S.L. 2001-387 (SB 842), as amended by S.L. 2001-413, Sec. 6, (HB 1070, Sec. 6) and S.L. 2001-487, Sec. 62 (HB 338, Sec. 62), makes similar changes to the NC Business Corporation Act, the NC Nonprofit Corporation Act, the NC Limited Liability Corporation Act, and laws governing the various forms of partnerships. These changes include conforming changes for corporations to operate under the Uniform Electronic Transaction Act, amendments to allow majority shareholder action without meeting for closely held corporations, amendments involving the formation and organization of limited liability companies, creation of limited liability limited partnerships, amendments allowing corporations to convert to non-corporation business entities, amendments permitting NC business entities to convert to foreign entities, standardized business entity definitions, standardize service of process on the Secretary of State, and changes to the tax law to conform tax treatment for various business entities.

**Corporation Changes** – The act amends the law to permit nonpublic business corporations by their articles of incorporation to allow shareholders to act without a meeting by majority written vote. Current law would require unanimous agreement. This process would not be permitted for the election of the board of directors at the annual meeting or other actions to protect cumulative voting rights. The act also authorizes corporations to give meeting notice and take consents to actions electronically in accordance with the Uniform Electronic Transactions Act.

**Limit Liability Company Changes** – The act clarifies the distinction between forming and organizing a limited liability company (LLC). Organization requires at least one member. The act also permits a LLC member to have no ownership rights in the company. It also sets out the rights and obligations of other persons managing the LLC other than a manager. The act provides that a LLC will be treated for State tax purposes as it is treated under federal tax law.

**Partnership Changes** – The act makes changes to general partnership and limited partnership laws. It permits the creation of a limited liability limited partnership that limits the liability of the general partners of the limited partnership. The act modernizes the partnership withdrawal provisions to include situations where a LLC and other business entities are general partners and allows an estate to distribute a general partner's share without triggering withdrawal as permitted in the partnership agreement. The act also provides that partnerships will be treated for State tax purposes as they are treated under federal law.

**Conversions and Mergers** – The act permits corporations to convert to non-corporate business entities and non-corporate entities to convert to corporations. It will also permit NC business entities, including corporations, LLC's, and partnerships, to convert to foreign (out-of-state) business entities. It also requires that a person who has liability protection under one business form has to consent to liability arising from the conversion to another business form before the conversion becomes effective.

**Office Address** – The act requires the various business entities to list the address of their principal office when the formative documents are filed with the Secretary of State.

**Miscellaneous Provision** - The act conforms the definition of business entities to be the same for the various business entities permitted under law. The act also standardizes the provisions for service

of process on the business entity through service on the Secretary of State. The act provides that where a business entity's authority to do business has been suspended by the Secretary of State for failing to report or pay taxes, when the right to operate is reinstated, the reinstatement is retroactive to the date of suspension.

Section 59A of the act requiring the Secretary of State to notify limited liability companies of the requirement for filing annual reports became effective September 1, 2001. The remainder of the act became effective January 1, 2002. (WR)

## **Unsolicited Checks to Secure Loans**

S.L. 2001-391 (SB 723) regulates the process of lending money through the use of unsolicited checks which, when cashed, obligate the recipient to repay the amount of the check with interest.

The act enacts a new statute, G.S. 75-20, that establishes the requirements for loans made through the use of unsolicited checks. The act requires disclosures that acceptance of the check constitutes a loan and that set out the sum of the loan, the interest rate, the term of the loan, the monthly payments, any late payment fees, and notice of a 10-day right to cancel by refunding the loan. The act provides remedies for when a check is fraudulently cashed. These include requiring the intended payee to sign a statement confirming that the intended payee did not sign the check, and requiring the lender to investigate the negotiation of the check, and if found to be fraudulent, to relieve the intended payee of liability and notify credit bureaus of the error. The act does not apply to loans where the payee has applied for or requested the loan, or where the lender has an existing account relationship with the consumer. Violation of the act constitutes an unfair trade practice under Chapter 75, which could subject the lender to treble damages and attorneys fees.

The act became effective October 1, 2001. (WR)

## **Enact Mortgage Lending Act**

S.L. 2001-393 (SB 904) repeals the existing registration of mortgage bankers and brokers and replaces it with a licensing law for mortgage lenders and mortgage brokers. Mortgage bankers, mortgage brokers, and loan officers are required to be licensed before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies for mortgage lending purposes only, governmental lenders, nonprofits who make mortgage loans, persons who make no more than five loans a year, and real estate brokers who do not receive compensation for making loans.

To be licensed, an applicant must show evidence of financial responsibility (bonding), branch office information, evidence of employee training and experience, legal corporate organization, and pay the necessary fees. The Commissioner of Banks shall license any person whose qualifications, experience, business history, and credit history are satisfactory. A mortgage broker or banker must have at least three years of residential lending experience. The financial responsibility requirements are a surety bond of \$150,000 for mortgage bankers and \$50,000 for mortgage brokers.

The act specifies the mortgage broker's duties to include safeguarding a borrower's money, acting with reasonable skill, care and diligence, and making reasonable efforts to secure loans reasonably advantageous to the borrower. The act also details specific prohibited activities, including brokering a loan with prepayment penalties if the loan is \$150,000 or less. The Commissioner is authorized to take disciplinary action against a licensee for violations including revocations of licenses and civil fines. In addition, the act makes it a Class I felony to engage in mortgage brokering or mortgage banking, unless exempt, without being licensed. The law requires all persons engaged in mortgage brokering or banking business who are exempt from the licensing requirements to register with the Commissioner or be subject to a civil fine of \$250.

The law provides for a transition to allow any person registered as a mortgage banker or broker under existing law to be eligible automatically for licensure under the new law. Within 90 days of the

effective date of this law, a person can be licensed as a loan officer upon filing a sworn application a qualified lender. Also within 90 days of the effective date, a qualified lender can also license all loan officers, managing principals, and principal and branch offices without having to meet the licensure requirements of the act by filing a sworn statement.

Finally, the Legislative Research Commission is authorized to study the effects of this act and the Predatory Lending Act and to report any recommendations to the 2002 Session of the General Assembly. The licensing provisions of the act become effective July 1, 2002, the remainder of the act became effective August 29, 2001. (KCB)

## **Good Funds Settlement Act Revisions**

S.L. 2001-420 (SB 790) clarifies the authority of a settlement agent in a real estate transaction to disburse funds in reliance on a deposit in the form of a check from a mortgage banker or agricultural credit association. The act amends G.S. 45A-4 by repealing the settlement agent's authority to disburse funds that are not "collected funds" in reliance on a deposit in the form of a check drawn on the account of a lender approved as a supervised or nonsupervised mortgagee by the United States Department of Housing and Urban Development. Instead, the settlement agent would be authorized to disburse funds that are not "collected funds" in reliance on a deposit in the form of a check drawn on the account of a licensed mortgage banker that has posted a minimum surety bond of \$300,000. The bond must run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check. The act also clarifies the meaning of a "political subdivision of the United States" by changing that term to "an agency or instrumentality of the United States, including an agricultural credit association."

The act became effective January 1, 2002, and applies to registered mortgage bankers. Effective July 1, 2002, (when these bankers will be subject to licensure requirements), the act would apply to licensed mortgage bankers. (SR)

## **Rental Cars – Advertising and Charges**

S.L. 2001-432 (HB 1269) amends the rental car statutes to require rental car companies to disclose clearly and conspicuously the existence and actual amount of any airport charges or fees included in any rental rate stated in advertisements, quotations and reservations for an airport location. A rental car company must inform the renter of the amount of the airport charges or fees either at the time of making an initial quotation of a rental rate or at the time of making a reservation, if the quotation is made by the rental car company for a location at which it collects airport charges or fees. For advertisements, quotations and reservations for more than one airport location, rental car companies have to disclose clearly and conspicuously the existence and range of airport charges or fees, if any, or the maximum airport charge or fee. In their computer-assisted reservation system, rental car companies have to display the amount of the airport charges or fees on the same page on the computer screen as the rental rate and at least in the same print size. Finally, airport access charges are removed from the types of charges that can be avoided by the renter thereby permitting rental car companies to pass the charge on to the renter so long as the charge is disclosed as otherwise provided in the statute.

The act became effective October 6, 2001. (TG)

## **Money Transmitters Act**

S.L. 2001-443 (SB 890) repeals the existing law regulating money transmitters and replaces it with a new Article 16A in Chapter 53 (Banking). The new Article is based upon the multi-state model legislation and is intended to give additional protection for the electronic transmission of money. On and after October 1, 2001, any person who engages in the business of money transmission in North Carolina must be licensed by the Commissioner of Banks, unless the person is exempt from the act. "Money transmission" is defined as (1) the sale or issuance of payment instruments or stored value, or (2) the act

of engaging in the business of receiving money or monetary value for transmission within the United States or abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer. The act does not apply to the United States or any department thereof, the U.S. Post Office, the State of North Carolina or its political subdivisions, banks or savings and loans organized under the laws of any state of the U.S., and persons registered as securities broker-dealers under federal or state securities laws to the extent of its operation as a broker-dealer.

A licensee must provide a surety bond of at least \$150,000 plus an additional \$5,000 per location with a maximum of \$250,000. In lieu of a surety bond, the licensee may deposit with the Commissioner an aggregate amount of not less than the surety bond of certain unencumbered assets. The Commissioner will issue a license if the Commissioner determines the applicant's business will be conducted honestly and fairly, and the other requirements of the act have been fulfilled.

A licensee may conduct business in multiple locations in the State through authorized delegates pursuant to a single license. An "authorized delegate" is an entity designated by a licensee to sell or issue payment instruments or stored value or engage in the business of transmitting money on behalf of the licensee. An authorized delegate is subject to the same supervision and regulation as the licensee.

A licensee's liability to any person for a money transmission is limited to the face amount of the payment instrument purchased. However, the Commissioner may impose a civil penalty of up to \$1,000 for each intentional violation of the Article or the rules. It is a Class 1 misdemeanor if a person knowingly and willfully makes a material and false statement in any document filed or required to be filed, and the statement is made with the intent to deceive. It is also a Class 1 misdemeanor if a person knowingly and willfully engages in the business of money transmission without a license. Any other violation of the Article is also a Class 1 misdemeanor.

The act became effective November 1, 2001. (KCB)

## **Public Enterprise Customer Billing Privacy**

S.L. 2001-473 (SB 774) amends G.S. 132-1.1 to provide that billing information compiled and maintained by a city, a county, or another public entity providing utility services as a public enterprise is not a public record. The information may be disclosed to bond counsel and others associated with the issuance of bonds or the credit rating of the entity, as well as in situations where it is necessary to assist the entity providing the public enterprise service in maintaining the integrity and the quality of the service. It may also be disclosed when necessary to assist various public safety agencies in the performance of their duties.

The act became effective November 29, 2001. (SR)

## **MV Dealer Disclosure of Certain Fees**

S.L. 2001-492 (SB 649) amends the Motor Vehicles Law to require conspicuous disclosure of motor vehicle dealer administrative fees and finance yield charges and to increase the surety bond requirement for license applicants under the MV Dealer's and Manufacturer's Licensing Law. The act requires motor vehicle dealers to disclose administrative fees, such as origination fees, associated with the sale or lease of a vehicle, and prohibits motor vehicle manufacturers from preventing dealers from charging administrative fees. The act also requires that dealers must also disclose that they receive fees or commissions for providing or procuring financing for the purchase or lease of a vehicle. However, there is no requirement that they disclose the amount of the fee or other aspects of the dealer's contractual arrangement with a lender. Failure to disclose the information required by this act prior to the effective date does not impose any civil or criminal liability on motor vehicle dealers.

The act also increases the bonding requirements for licensed motor vehicle dealers, manufacturers, factory branch distributors, distributor branches, and wholesalers from \$25,000 to \$50,000 for one salesroom or place of business, and from \$10,000 to \$25,000 for each additional salesroom or place of business. The act clarifies that a dealer who has suffered a loss due to the failure of a license holder to deliver free and clear title to a vehicle to that dealer, has the right to institute an

action to recover against the offending license holder and the surety bond. The act provides that the Division of Motor Vehicles shall issue or reissue an unbranded title for vehicles titled between July 20, 2001, and November 1, 2001, if the vehicle was damaged by collision or other occurrence and if the cost of repairs, including parts, did not exceed 75% of its fair market value.

The disclosure and the bonding provisions of the act became effective December 31, 2001, and the salvaged vehicle provision became effective December 4, 2001. (KCB)

## **Corporate Asset Transfers**

S.L. 2001-508, Sec. 1 (HB 168, Sec. 1) permits the board of directors of a corporation to transfer corporate assets to a wholly owned limited liability company, limited partnership, registered limited liability partnership, or any other unincorporated entity without the approval of the shareholders. Under prior law, the board of directors of a corporation could only transfer corporate assets to a wholly owned corporation without shareholder approval, unless otherwise prohibited by the articles of incorporation or bylaws. This legislation was a recommendation of the General Statutes Commission.

This section became effective December 19, 2001 and applies to transfers occurring on or after that date. (TG)

## **No Sales Tax on Certain Publications**

S.L. 2001-509 (SB 400). See **Taxation**.

## **Motor Vehicle Dealers and Manufacturers Licensing Law Amendments**

S.L. 2001-510 (SB 470) makes various changes to the Motor Vehicle Dealers and Manufacturers Licensing Law. The act requires a motor vehicle manufacturer to provide written notice to a motor vehicle dealer at least 10 days before charging a dealer or debiting a dealer's account for merchandise, tools, or equipment other than a new vehicle, or merchandise, tools, or equipment specifically ordered by the dealer. If the dealer believes that a charge or debit is in violation of Article 12 or contrary to the terms of the franchise, and the amount in controversy is less than or equal to \$10,000, then the dealer may, prior to petitioning the Commissioner of the Division of Motor Vehicles or filing a civil action in court, request a mediated settlement conference. The procedures for the mediation are provided.

The act also prohibits a manufacturer from varying the price that it charges dealers for new vehicles based on certain enumerated factors. The new law provides two exceptions to the prohibitions against varying motor vehicle prices. If as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its dealers in a manner that would otherwise violate the law, or had in effect a documented policy that had been conveyed to its dealers that varied the price charged to its dealers in a manner that would otherwise violate the law, the program or policy may continue in effect until June 30, 2006. In addition, if subsequent to October 1, 1999, and prior to June 30, 2001, a manufacturer implemented a program that varied the price charged to its dealers in a manner that would otherwise violate the law, or implemented a documented policy that had been conveyed to its dealers that varied the price charged to its dealers in a manner that would otherwise violate the law, and the program or policy is in compliance with the law as it existed on June 30, 2001, the program or policy may continue in effect until June 30, 2006.

A manufacturer may establish sales contests or promotions that provide or award dealer or consumer rebates or incentives, but the new law provides that such rebates or incentives are allowed only upon certain conditions. The cost of any program that is prohibited by the act may not be included in the price of a vehicle. However, a manufacturer is not prohibited from providing assistance or



encouragement to a dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities provided that the assistance, encouragement, or rewards are not determined on a per vehicle basis.

Manufacturers are prohibited from doing any of the following:

- Discriminating against similarly situated dealers.
- Unfairly discriminating against dealers who have dual facilities.
- Unfairly discriminating against dealers with respect to any aspect of the franchise agreement.
- Using any financial services company or leasing company owned or controlled by the manufacturer to accomplish what would otherwise be illegal conduct on the part of the manufacturer.

The act authorizes a court to award punitive damages, attorneys' fees, and court costs if it finds that a violation of the motor vehicle dealers and manufacturers licensing laws is "willful". In addition, the act also provides that any association that is comprised of a minimum of 400 dealers, or a minimum of 10 motorcycle dealers, has standing to file a petition before the Commissioner of the Division of Motor Vehicles or a cause of action in any court of competent jurisdiction for itself, or on behalf of any or all of its members, seeking declaratory and injunctive relief if the association alleges an injury to the collective interest of its members. An association entitled to standing must initiate mediation prior to filing a petition before the Commissioner or a cause of action in court.

A manufacturer may not assign or change a dealer's area of responsibility arbitrarily or without due regard to the present or projected future patterns of motor vehicle sales and registrations within the dealer's market. Dealers can contest changes to their area of responsibility at a hearing before the Commissioner where the manufacturer has the burden of proving that the changes are reasonable in light of present or projected future pattern of motor vehicle sales and registrations within the dealer's market. In addition, a manufacturer may not require or coerce, or attempt to coerce, dealers into purchasing or leasing signs displaying the name of the manufacturer or dealer upon unreasonable and onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. The act also prohibits the manufacturers of recreation vehicles, subject to certain exceptions, from owning dealerships.

The act became effective January 4, 2002, and applies to causes of action arising on or after that date. (RZ)

## Revise Consumer Finance Act

S.L. 2001-519 (HB 599) makes several changes to the North Carolina Consumer Finance Act. The Consumer Finance Act authorizes the Commissioner of Banks to license and to supervise loan companies, which make direct consumer loans of \$10,000 or less. The current law creates two tiers of lenders. G.S. 53-173 allows interest charges of 36% per year on that part of the unpaid principal balance, which does not exceed \$600, and 15% per year on that portion which is more than \$600 but not more than \$3,000. G.S. 53-176 authorizes optional rates for those lenders who elect to make loans of \$10,000 or less and who so notify the Commissioner. These lenders may charge interest at the rate of 30% per year on that part of the unpaid principal balance, which does not exceed \$1,000, and 18% per year on the remainder, which does not exceed \$7,500. If the principal balance is more than \$7,500, the maximum rate is 18% per year on the entire loan. Optional rate lenders may also charge a reasonable credit investigation fee, which cannot exceed the actual cost of the credit investigation. Both categories of lenders use a blended interest rate for most loans made under the Article.

This act makes the following changes to the current law:

- Increases the amount of loanable assets that a licensee must possess to obtain a license from \$25,000 to \$50,000.
- Creates a loan processing fee of \$25 for loans made under G.S. 53-173.
- Eliminates the credit investigation fee and authorizes a loan processing fee of \$25 for loans up to \$2,500, and 1% of the cash advance for loans above \$2,500, not to exceed a total fee of forty dollars, for loans made under G.S. 53-176.
- Requires lenders who solicit loans using facsimile or negotiable checks to comply with the law

on soliciting loans with unsolicited checks by requiring certain disclosures on the check and other associated documents.

- Requires lenders to return to borrowers both the originals and copies of any note, or other evidence of indebtedness, upon payment of the loan in full.
- Allows licensees to make certain required reports to the Commissioner by means of optical disk.

The act became effective January 1, 2002, and applies to loans made on or after that date.

(KCB)

## **Major Pending Legislation**

### **Procedures For Deferred Deposit Checks**

HB 1071 would have extended the August 31, 2001 sunset on the delayed deposit provisions (Payday lending) of the Check Casher Act until July 31, 2003, and would have added additional consumer protection provisions for deferred deposit transactions. The last version of the bill added several provisions designed to prevent out-of-state lenders from circumventing North Carolina law by contracting with in-state agents to originate loans in North Carolina and fund them elsewhere. The bill also would increase the licensing fees for licensees who offer deferred deposit check cashing services.

On August 31, 2001, the law that authorized payday lending in North Carolina expired. Since then a number of the smaller payday lenders in the State have gone out of business. However, others have entered into arrangements with federally chartered banks located outside of North Carolina to continue offering these loans, often on terms inconsistent with what had been authorized by North Carolina law before it expired.

In January 2002, the North Carolina Attorney General commenced a court action against one of the nation's largest payday lending companies seeking to stop it from making loans in North Carolina.

(KCB)

# Chapter 7

## Constitution And Elections

Erika Churchill (EC), Bill Gilkeson (BG)  
and others (See references by initials on page 269 of this publication.)

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

### Enacted Legislation

#### **Legislative Candidate Interest Statement**

S.L. 2001-119 (HB 723) fills in some gaps and makes some changes in the statute requiring legislative candidates to file statements of economic interest. Prior law provided a filing method for candidates seeking party nominations in a primary, unaffiliated candidates, and candidates appointed to vacancies on a party ticket. S.L. 2001-119 adds provisions for candidates to file when they are nominated by a new-party convention rather than in a party primary. It provides that someone appointed to a vacancy in the General Assembly must file an economic interest statement with the Legislative Services Office and with every county board of elections in the district within 10 days of taking office. The act specifies that the information on the statement must be current as of December 31 of the year before it is filed.

The act became effective May 25, 2001. (BG)

#### **Pollworker Discharge**

S.L. 2001-169 (SB 716) prohibits an employer from firing or demoting an employee because that employee works on election day as a precinct official.

The act became effective June 7, 2001. (EC)

#### **Eliminate Campaign Report Notarization**

S.L. 2001-235 (HB 573) eliminates the requirement that a campaign finance report have a notarized signature. Instead, the signer of the report must certify that it is true. The act provides that if the signer certifies the report knowing it to be false, that person may be prosecuted for perjury.

The act became effective June 22, 2001. (BG)

#### **Ballot Instructions in Spanish**

S.L. 2001-288 (HB 1041) requires all ballot instructions to be printed in both English and Spanish in counties with a Hispanic population greater than six percent (6%). The State Board of Elections is to prepare the Spanish translations for the county boards of elections.

The act became effective January 1, 2002. (EC)

## Presidential Elector Challenge

S.L. 2001-289 (HB 31) amended Article 18 of Chapter 163 to include a new section setting forth the manner in which presidential electors are to be appointed if the elections results have not been proclaimed by the sixth day before electors are to meet. G.S. 163-210 provides that the Secretary of State certifies the names of the presidential electors once the election results have been received from the State Board of Elections; no provision was given for how to appoint presidential electors if the election results could not be certified for some reason. S.L. 2001-289 provides that the General Assembly may fill the position if the election results have not been proclaimed by the sixth day before electors are to meet, and the Governor may fill the position if the elector(s) have not been selected by the day before the electors are to meet.

The act became effective July 19, 2001. (EC)

## Children in Voting Enclosures

S.L. 2001-292 (HB 980) specifically permits children under the age of 18 to enter the voting enclosure, the area of the voting place in which voting takes place. Prior to S.L. 2001-292, only the following persons are permitted inside the voting enclosure while the polls are open to voting:

- Officers of the election.
- Voters.
- A near relative of the voter, if that near relative is assisting the voter in the act of voting.
- Any voter of the precinct called upon to assist another voter in the act of voting.
- Municipal policemen.
- Voters participating in a challenge.
- Appointed observers.
- Persons, including minors, participating in a simulated election for minors.

The act permits minors to enter the voting enclosure with a voter, even if no simulated election is being conducted. The minor would have to accompany the voter, and remain under the control of the voter while in the voting enclosure.

The act became effective July 21, 2001. (EC)

## Ban Butterfly and Punch Card Ballots

S.L. 2001-310 (HB 34) bans the use of the "butterfly" style of ballot in all elections in North Carolina. The act also outlaws the use of punch card ballots in all elections, but permits those entities, which used punch card ballots in the November 2000 election to continue using punch card ballots until January 1, 2006.

The act became effective July 28, 2001, and applies to all elections conducted on or after that date. (EC)

## **Voter Address Change by Fax**

S.L. 2001-314 (HB 1193) allows a registered voter who moves within a county to notify the county board of election of the change in address by facsimile transmission under the same deadlines as if it were submitted in person, which is by 5:00 p.m. on the 25<sup>TH</sup> day before the election.

The act became effective January 1, 2002. (EC)

## **Voter Registration by Fax**

S.L. 2001-315 (HB 1186) allows any individual to submit an application to register to vote by facsimile transmission (fax). The faxed application has to be submitted in the same time frame in which an application submitted in person must be received – by 5:00 p.m. on the 25<sup>TH</sup> day before the election. Additionally, a copy of the completed, signed form must be delivered to the county board of elections at least 20 days before the election.

The act became effective January 1, 2002. (EC)

## **Clarify Residency for Registration or Voting**

S.L. 2001-316 (HB 1186) clarifies that an individual who leaves that individual's permanent home to serve State Government does not give up that individual's residency by living temporarily in another county. The act also makes miscellaneous changes to G.S. 163-57 to eliminate the use of gender identifying language.

The act became effective July 28, 2001. (EC)

## **Labeling of Campaign Ads**

S.L. 2001-317 (HB 57) changes the 1999 requirements for labeling of campaign ads in print and on radio. The 1999 law said the required disclosure statement in a print ad had to be at least 5% of the height of the printed space of the ad, as long as it was no smaller than 12-point type. The act amends that requirement to say that in newspapers or newspaper inserts; the disclosure statement in an ad need not be 5% if it is printed at least in 28-point type.

**This sentence is in 28-point type.**

The 1999 law said a disclosure statement on a radio ad must last at least three seconds. The act changes that to say a radio disclosure statement must be "spoken so that its contents may be easily understood".

The act became effective July 28, 2001. (BG)

## **Election Administration**

S.L. 2001-319 (HB 831) is an omnibus bill that, among other things, allows the State Board of Elections to initiate termination proceedings against county election directors (effective January 1, 2002) and moves the One-Stop absentee voting period from the Thursday after the close of registration to the Saturday before election day (effective January 1, 2002). The act also allows county boards not to conduct One-Stop at the board office if other sites are adequate and at least one is close by (effective January 1, 2002). Its other provisions include the following:

- Shortening the name of the State's chief full-time election official from "Executive Secretary-Director" of the State Board of Elections to "Executive Director" of the State Board of Elections. (Effective July 28, 2001).
- Requiring each county board of elections to give each voter a permanent voter registration number that would not be reassigned (effective January 1, 2002). (BG)

## Superior Court Districts Realignment

S.L. 2001-333 (S.B. 476) realigns superior court districts in Guilford and Wake Counties based on current precincts. The General Assembly is charged by the Constitution with dividing the State into superior court judicial districts. Each regular resident superior court judge is elected from the district in which he or she is a resident (NC Const. Art. IV, §9 (1) and §16). G.S. 7A-41 sets forth the boundaries of the State's superior court districts and apportions the 91 regular resident superior court judgeships among them. As of January 1, 2001, there are 63 of these districts. On January 1, 2003, there will be 65 superior court districts when the present Superior Court District 5 (consisting of New Hanover and Pender Counties) is split into the individual districts 5A, 5B, and 5C.

The act realigns the superior court districts in Guilford and Wake Counties to, among other things, reflect changes made in each county's precinct boundaries since the districts involved were originally created in 1987. The act also makes a technical correction to G.S. 7A-41(b) to make clear that Superior Court District 10A has two judges, as is already provided in G.S. 7A-41(a). In addition, the act amends G.S. 7A-41(c), which references the precincts for Guilford and Wake Counties.

The changes made to the Wake County Superior Court Districts became effective August 3, 2001, and the changes made to the Guilford County Superior Court Districts are effective upon preclearance by the United States Department of Justice pursuant to Section 5 of the Voting Rights Act of 1965. (RZ, TS)

## Early Voting/No-Excuse Absentee

S.L. 2001-337 (HB 977) removes the excuse requirement from all absentee voting – mail and One-Stop. This applies in primaries and general elections. Prior law required anyone seeking to vote an absentee ballot to have one of several "excuses" for voting that way. One such excuse was disability. Another was that the voter expected to be out of the county all day on election day. In 2000, for the first time, the excuses were removed for One-Stop for the general election only. The act removes the excuses for One-Stop and mail, for primaries and general elections.

The act became effective January 1, 2002. (BG)

## Miscellaneous Election Changes

S.L. 2001-353 (SB 11) contains miscellaneous election changes, mostly technical. One change is to require county boards of elections to mail a notice to any voter whose precinct has changed. Many counties had already been doing that, but under prior law they were not required to. The act requires the notice to be mailed 30 days before election day.

Almost all provisions of the act became effective August 10, 2001. (BG)

## Municipal Boards of Elections

S.L. 2001-374 (SB 16) abolishes municipal boards of elections, except for four: Morganton, Old Fort, Granite Falls, and Rhodhiss. At the beginning of 2000, mayoral and city council elections in more than 50 municipalities were conducted by a municipal board of elections, appointed by the city council. All but a few of those municipalities were very small. The State Board of Elections has

waged an aggressive campaign to abolish the system and have all municipal elections conducted by the county boards of elections. The act gives the State Board of Elections authority to shut down an existing municipal board permanently under certain conditions.

The chief provisions of the act became effective January 1, 2002. (BG)

## Protection of Voter Rolls

S.L. 2001-396 (HB 1188) provides a voter with the ability to protect their home address in certain circumstances. Voter registration information is a public record. The voter registration information to which any member of the public has access is: name, residence address, date of birth, party affiliation, and history of when, but not how, the voter voted. In order to protect the residence address, the voter must request that the county board of elections keep the voter's address confidential by presenting to the board a protective court order and a signed statement that making the address public would jeopardize the voter's or a family member's physical safety. The address would remain a public record, but would be held in confidence for so long as the protective order is in place. The voter's written statement would also be kept confidential while the protective order was in effect. It would be the responsibility of the voter to provide the county board of elections with copies of the protective order in effect to maintain the confidential status of the public record. The act does provide that the address can be inspected by a law enforcement official or by a person directed by court order to inspect the address.

The act became effective December 1, 2001. (EC)

## Election Law Rewrites (SB 14 and SB 17)

S.L. 2001-398 (SB 14) rewrites Articles 15 and 16 of Chapter 163, the Election Law. Those articles deal with counting ballots and canvassing votes. The new legislation puts into statute the rules that provide for settling election protests. The rewrite also does the following:

- Initial Counting of Ballots. The rewrite introduces the concept of "initial counting" of ballots, whether done at the precinct or at the county board of elections. It contains the principle that the voter's choice shall be honored where it can be determined. It applies that principle to provisional ballots, saying that they shall be counted for ballot items where the voter was eligible to vote, even if the county board determines the voter was not eligible to vote part of the ballot. *G.S. 163-182.2*.
- Recounts. The rewrite collects all provisions about recounts into one statutory section. It gives the State Board of Elections the authority to promulgate rules about the conduct of recounts, whether ordered because of a close margin or for some other reason. It specifies that those rules shall guide boards of elections on when and to what extent to conduct hand-to-eye recounts. It says the rules shall provide guidance in the interpretation of the voter's choice. *G.S. 163-182.7*.
- Tie Votes. The rewrite replaces the current variety of resolutions to tie votes in general elections with this rule: If the tie was in an election with more than 5,000 voters, there shall be a new election; if 5,000 or less, the tie is broken by a random selection between the tied candidates. *G.S. 163-182.8*.
- New Elections. The rewrite moves the new-election provisions from Article 3 to Article 15A. The rewrite clarifies that, regardless of the reason for the new election, it may be ordered only by a vote of at least 4 of the 5 members of the State Board. The rewrite also addresses issues on which the prior statute was silent: **Who may vote in the new election?** The rewrite says whoever is eligible at the time of the new election, except that the State Board must promulgate rules to prevent someone who voted in a primary of one party from voting in a new-election primary of the other party. **Must the new election be held in the entire jurisdiction of the initial election?** The rewrite says yes. **Which candidates must be on the ballot in the new election?** The rewrite

says all the candidates from the first election, except that a vacancy by death or disqualification may be filled as before the original election, and in the case of a multi-seat office, the State Board by a vote of 4 may limit the new election to the affected candidates. Also a new election for a tie includes only the tied candidates. *G.S. 163-182.13.*

- Certifications. The rewrite changes slightly the duties for issuing certificates of election for higher offices. Under prior law, the State Board certified the result to the Secretary of State, who issued a certificate to the elected person on demand. The rewrite has the State Board issuing the certificate to the candidate, with the Secretary of State retaining a record-keeping duty for abstracts of results. *G.S. 163-182.6.*

S.L. 2001-460 (SB 17) rewrites Articles 13 and 14 of Chapter 163, which deal with setting up the ballot, acquisition of voting equipment, and procedures at the polls on election day. The rewrite largely consists of carrying forward prior law into an updated format. In many instances specific statutory requirements are replaced by guidelines for the State Board of Elections to follow in adopting rules.

In some instances, however, the act makes policy changes in prior law. Notably, the act gives the State Board of Elections authority to disapprove voting equipment and to set a schedule for discontinuance in a county. Previously, the State Board only had authority to approve a list of types of voting equipment that counties could purchase initially. Other policy changes include the following:

- County Financial Responsibility for Producing the Ballot. Under prior law, 99 counties paid for producing ballots. In the one county that relies on hand-counted paper ballots, the State paid for the State paper ballots and the county paid for the rest. The act standardizes the law by making the county responsible for producing all ballots. *G.S. 163-165.3*
- Gender Neutrality of Candidates' Names on Ballots. Under prior law, the candidate's name appeared on the ballot the way the candidate listed it on the notice of candidacy. Titles were not permitted, except that married women could use "Mrs." and unmarried women could use "Miss." ***The rewrite says titles indicating rank, status, or position may not be used, but allows the use of the terms Mr., Mrs., Miss, and Ms.*** *G.S. 163-165.5.*
- Order of Names on Primary Ballot. Prior law required the rotation of names on primary ballots in the one hand-counted paper county, but did not require it in the 99 other counties. A lawsuit settlement resulted in a compromise method. ***The rewrite says that in all counties, names in a primary ballot item on that county's ballots shall be determined by random selection.*** *G.S. 163-165.6.*
- Straight Ticket for All But the Presidency. Under prior law, the straight party ticket was restricted in a number of ways for hand-counted paper ballots, but less clearly for the 99-machine/electronic counties. ***The rewrite follows the prevailing practice of the 99 counties, which is to count the straight ticket for all but the presidential race.*** *G.S. 163-165.6.*
- More Flexible Buffer Zone. Prior law mandated a 50-foot buffer zone around the voting place in which no one could "loiter about, congregate, distribute campaign material, or do any electioneering." ***On the theory that the rigid 50-foot limit may, given the arrangement of some voting places, preclude any zone for electioneering, the rewrite allows the county board flexibility in designing the buffer zone, provided that it must be at least 25 feet from the voting place. It removes the candidate's apparent right under current law to enter the buffer zone. The rewrite also removes the language, constitutionally vulnerable according to the American Civil Liberties Union, about "loitering about and congregating." The rewrite requires the county, where practical, to provide an area outside the buffer for election-related activity.*** *G.S. 163-166.4.*



- Extra Hour at the Polls. Prior law said the polls closed at 7:30 p.m., but the county board could keep them open an extra hour where voting machines are used. *The rewrite says the county board may keep the polls open an extra hour anywhere in extraordinary circumstances. G.S. 163-166.*

Both acts became effective January 1, 2002. (BG)

## **Campaign Finance Enforcement**

S.L. 2001-419 (SB 1002) creates civil penalties for intentional violation of the laws regulating contributions. The monetary civil penalty cannot exceed three times the amount of the illegal contribution. Under prior law, the chief enforcement tool was misdemeanor criminal prosecution. On the criminal side, the act runs the statute of limitations from the day the last report is due for the election cycle for which the violation occurred. The act also increases campaign finance reporting for municipal elections.

The act became effective January 1, 2002. (BG)

## **Annual Absentee/Forsyth Superior Court Judge**

S.L. 2001-507 (HB 1195) provides that a sick or disabled voter may request an annual application for an absentee ballot when the voter states that the sickness or physical disability is expected to last for the calendar year. Currently the application would be valid only for the primary or election at hand. The act also realigns the superior court judge districts in Forsyth County to reflect the 2000 Census data.

With respect to the realignment of the Forsyth County superior court judge districts, the act applies to appointments, primaries and elections on or after January 1, 2002. The remainder of the act applies to primaries and elections held on or after January 1, 2002. (EC)

## **Studies**

### **Legislative Research Commission**

#### **The 2001 Studies Bill**

S.L. 2001-491, Sec. 2.1(7)(a) (SB 166, Sec. 2.1(7)(a)) authorizes the Legislative Research Commission to study providing for a later primary date.

The act became effective December 19, 2001.

### **New Independent Studies/Commissions**

#### **Election Laws Revision Commission Studies**

S.L. 2001-491, Sec. 32.1 through Sec. 32.9 (SB 166, Sec. 32.1 through Sec. 32.9) creates the Election Laws Revision Commission to study various issues and prepare a comprehensive revision of the election laws.

The act became effective December 19, 2001.

*Chapter 8*  
*Criminal Law and Procedure*

Brenda Carter (BC), Frank Folger (FF), Walker Reagan (WR),  
Susan Sitze (SS), Rick Zechini (RZ) and others (See references by  
initials on page 269 of this publication.)

## **Enacted Legislation**

### **Unlawful to Impede School Bus**

S.L. 2001-26 (SB 45) clarifies and strengthens the law pertaining to persons who interfere with the operation of public school buses. The act makes it a Class 1 misdemeanor to unlawfully and willfully stop, impede, delay, or detain any public school bus or activity bus during any time that the bus is being operated for public school purposes. The act increases the punishment for the offenses of trespassing on a public school bus or school activity bus and refusing to leave a public school bus or school activity bus on demand of an authorized person from a Class 2 misdemeanor to a Class 1 misdemeanor. The act amends the definition of disorderly conduct to include a person who intentionally causes a public disturbance by disturbing the peace, order or discipline on a public school bus or school activity bus.

The act became effective December 1, 2001 and applies to offenses committed on or after that date. (BC)

### **DA Discretion**

S.L. 2001-81 (HB 1117) authorizes the State to try a defendant either capitally or noncapitally for first degree murder, even if evidence of an aggravating circumstance exists. The act provides for this prosecutorial discretion as follows:

- The State is required to give notice to the defendant and the court of its intent to seek the death penalty on or before the date of the pretrial conference.
- If the State does not give this notice, then the trial must be conducted as a non-capital proceeding. If the defendant is found guilty of first degree murder, the sentence will be life imprisonment.
- If the State does give notice of its intent to seek the death penalty, the State may accept a sentence of life imprisonment for a defendant at any time during the prosecution of a capital case, even if there is evidence of an aggravating circumstance.
- If the State notifies the defendant that it intends to seek the death penalty, the defendant pleads guilty to first degree murder, and the State has not accepted a sentence of life imprisonment, then the court must conduct a separate sentencing proceeding to determine whether the sentence should be life imprisonment or death.
- The State may accept a sentence of life imprisonment for a defendant upon remand from the North Carolina Supreme Court of a capital case for resentencing or upon an order of resentencing by a court in a State or federal post-conviction proceeding.

The act became effective July 1, 2001, and applies to pending and future cases, except that the provisions regarding the State's notice of intent to seek the death penalty do not apply to defendants indicted in capital cases before that date. (WGR)

## **Outlaw Taking of Sea Oats**

S.L. 2001-93 (SB 30) makes it a Class 3 misdemeanor to dig up, pull up or take sea oats from the land of another or from the public domain without permission of the owner of the land. The offense is punishable by a fine of not less than \$25 and not more than \$200 for each offense.

The act became effective December 1, 2001, and applies to offenses committed on or after that date. (BC)

## **Expunge Improper Criminal Charge/Identity Fraud**

S.L. 2001-108 (SB 262) allows persons charged with an infraction or crime due to another person's use of his or her identifying information to apply to the court for an expunction order after the charge has been dismissed or a finding of not guilty has been entered. A person whose record is expunged is not legally required to acknowledge the charge or conviction.

The act directs that all records of the courts, law enforcement, DMV or other State or local government agencies be expunged and that any administrative action taken as a result of the charges or convictions be reversed at no cost to the person having the records expunged. In addition, any insurance company that charged additional premiums as a result of the charges or convictions expunged must refund the additional premiums paid.

The act became effective October 1, 2001 and applies to charges filed before, on, or after that date. (SS)

## **Juvenile Justice Under Corrections Oversight**

S.L. 2001-138 (SB 67) authorizes the Joint Legislative Corrections And Crime Control Oversight Committee to study issues related to the Department Of Juvenile Justice and Delinquency Prevention. The act changes the name of that committee to The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

The act became effective July 1, 2001. (BC)

## **Interfere with Emergency Communications**

S.L. 2001-148 (SB 1004) amends the law regarding interference with emergency communications and increases the punishment to a Class A1 misdemeanor regardless of the amount of damage caused by the interference.

The act broadens the definition of "emergency communication" to include communications to law enforcement agencies or other emergency personnel, or other individuals, relating or intending to relate that an individual is or is reasonably believed to be, or reasonably believes himself or another person to be, in imminent danger of bodily injury, or that an individual reasonably believes that his property or the property of another is in imminent danger of substantial damage, injury, or theft.

The act also defines "intentional interference" to include the removal, hiding, tampering with, damaging, disconnecting, or making unavailable of a communications instrument or emergency instrument. The definition also includes providing false information to cancel or otherwise indicate that assistance is no longer needed when in fact it is needed.

The act became effective December 1, 2001 and applies to offenses committed on or after that date. (SS)

## Secure Custody of Juveniles Using Weapons

S.L. 2001-158 (HB 1083) amends G.S. 7B-1903(b)(2) to allow a juvenile court judge to order secure custody for a juvenile who is alleged to be delinquent, pending an adjudicatory hearing, if the juvenile has demonstrated that the juvenile is a danger to persons and the juvenile is charged with a misdemeanor in which the juvenile used, displayed, or threatened to use a firearm or other deadly weapon. Subdivision (2) currently allows secure custody if the juvenile is a danger to persons and is charged with a misdemeanor that includes an assault. That reason for secure custody remains.

The act became effective December 1, 2001 and applies to offenses committed on or after that date. (SR)

## Day Reporting Centers

S.L. 2001-179 (SB 876) provides that a judge may order participation in a supervised day program as a possible dispositional alternative for juveniles who receive a Level One disposition in a delinquency proceeding. Under prior law, this alternative was only available for a Level Two or Level Three disposition, which involve more serious offenses. The ordering of this alternative is within the discretion of the judge and remains available for a Level Two or Level Three disposition. The act requires that the court consider the structure and operation of the program and whether it will meet the needs of the juvenile before ordering participation in a day program as a dispositional alternative.

The act became effective October 1, 2001 and applies to offenses committed on or after that date. (TG)

## Tennessee Valley Authority Officers' Authority

S.L. 2001-257, Sec. 1 (HB 689, Sec. 1). See **State Government**.

## Testimonial Privilege for Violence Victims

S.L. 2001-277 (HB 643). See **Civil Law and Procedure**.

## Innocence Protection Act

S.L. 2001-282 (HB 884) makes provisions to assist an innocent person charged with or wrongly convicted of a criminal offense in establishing the person's innocence and to expunge the DNA records arising from the wrongful charge or conviction. The act also establishes the defendant's rights to DNA analysis and DNA samples pretrial, post-trial, and post-conviction.

Section 1 of the act amends the current expungement statute to allow the court to order an expungement of the DNA records and samples from the SBI DNA database upon a motion by the defendant, when the trial court dismisses the charge.

Section 2 creates a new section of the expungement statutes to allow a defendant to request the court to order an expungement of the DNA records and samples from the SBI DNA database when the defendant's conviction is reversed and dismissed on appeal, or where the defendant is granted a pardon of innocence by the Governor.

Section 4 adds several new statutes to Article 13 of Chapter 15A, dealing with access to DNA testing and samples:

- **G.S. 15A-267** requires the defendant to have pretrial access to any DNA analyses performed or biological material samples not tested arising in connection with the case in which the defendant is charged. The court may order that any biological material not tested that is material to the investigation and material to the defendant's case be tested.

- **G.S. 15A-268** requires any governmental entity that collects evidence containing DNA in the course of a criminal investigation to preserve a sample of the evidence collected suitable for DNA testing for as long as the defendant convicted of a felony is incarcerated. Notwithstanding this requirement, the governmental entity may dispose of the DNA samples prior to the defendant's completion of their incarceration only after notifying the defendant, the defendant's attorney, the public defender in the county of conviction, the district attorney in the county of conviction and the Attorney General of their intent to dispose of the samples, and the governmental entity does not receive, within 90 days of the receipt of the notification by the defendant, a request that the material not be destroyed because the case is on appeal, in post-conviction proceeding, or the requesting party will file, within 180 days, a motion for DNA testing. Notice of the intent to dispose of the evidence is to be delivered to the defendant by the superintendent of the corrections facility where the defendant is incarcerated.
- **G.S. 15A-269** provides for post-conviction DNA testing. Upon a finding that DNA testing on any biological matter that: (1) is material to the defendant's defense, (2) is related to the investigation or prosecution that resulted in the judgment; and (3) was not previously tested, or was previously tested, would provide results that are significantly more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results, the court shall determine if a DNA test had been conducted using current technology and the results were admitted at trial that there is a reasonable probability the verdict would have been more favorable to the defendant. If so, the court shall order testing.
- **G.S. 15A-270** provides post-test procedures. Upon receipt of the test results, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant. If the results of the DNA testing are unfavorable to the defendant, the court shall dismiss the motion and if the defendant is not indigent, may assess the cost of the testing to the defendant. If the results of the DNA testing are favorable to the defendant the court shall enter any order that serves the interest of justice, including an order vacating and setting aside the judgment, discharging the defendant if the defendant is in custody, resentencing the defendant, or granting a new trial.

Section 5 adds a new subsection to G.S. 15A-903 to allow criminal defendants to have access to DNA laboratory reports provided by the SBI to the district attorney where the defendant's DNA has been matched with other DNA samples in the DNA database.

G.S. 15A-267, granting the defendant pretrial access to DNA testing and samples, and Section 5, granting access to DNA reports of DNA matches to the defendant became effective July 13, 2001 and apply to persons charged with crimes on or after that date. The remainder of the act became effective October 1, 2001 and applies to evidence, records and samples possessed by a governmental entity on or after that date. (WR)

## **Increase Penalty/Drug Sales at Parks**

S.L. 2001-307 (HB 1174) amends G.S. 90-95(e) by adding a new subdivision (10) that provides that any person 21 years of age or older who manufactures, sells, or delivers or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of a playground in a public park will be punished as a Class E felon. This provision would not apply to the transfer of less than five grams of marijuana for no payment. "Playground" is defined as any outdoor facility, including any parking lot serving the facility, intended for recreation, open to the public, and containing three or more separate apparatuses intended for the recreation of children.

The act became effective December 1, 2001, and applies to offenses committed on or after that date. (SR)

## **No Drugs at Child Care Centers**

S.L. 2001-332 (SB 751) provides that any person 21 years of age or older who manufactures, sells, or delivers, or who possesses with intent to manufacture, sell, or deliver a controlled substance on or within 300 feet of a licensed child care center will be punished as a Class E felon. This provision does not apply to the transfer of less than five grams of marijuana for no payment.

The act became effective December 1, 2001, and applies to offenses committed on or after that date. (JH)

## **No Death Penalty/Mentally Retarded**

S.L. 2001-346 (SB 173) prohibits a mentally retarded person convicted of first-degree murder from receiving the death penalty. "Mentally Retarded" is defined as "significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of 18". "Significantly subaverage general intellectual functioning" means an IQ of 70 or below, and "adaptive functioning" includes such things as: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure skills and work skills.

The defendant may make a pre-trial motion to have the court determine if the defendant is mentally retarded. The court may order a hearing on the motion, and must order a hearing on the motion if the State consents to the hearing. The defendant has the burden of proving the defendant's mental retardation by clear and convincing evidence. If the court finds the defendant mentally retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant. The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

If the court does not find the defendant mentally retarded in the pretrial proceeding, upon introduction of evidence of the defendant's mental retardation during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant is mentally retarded. This special issue shall be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence. If the jury finds the defendant mentally retarded, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment. If the jury finds that the defendant is not mentally retarded, the jury may consider any evidence of mental retardation presented during the sentencing hearing when determining aggravating or mitigating factors and the defendant's sentence. The defendant has the burden of proving mental retardation to the jury at the sentencing hearing by a preponderance of the evidence.

The act also allows persons sentenced to death before October 1, 2001, and persons whose trials were in progress on October 1, 2001, but not yet completed, to file a postconviction motion alleging that they are mentally retarded and should not be subject to the death penalty. Persons sentenced before October 1, 2001 must file the postconviction motion on or before January 31, 2002. Persons whose trials were in progress on October 1, 2001 must file the postconviction motion within 120 days of the imposition of a sentence of death.

The provisions of the act regarding pretrial motions and determination of mental retardation by the jury became effective October 1, 2001 and apply to trials docketed to begin on or after that date. The provision for postconviction motions for certain defendants became effective October 1, 2001 and expires on October 1, 2002. (SS)

## **Theft of Gasoline/License Suspension**

S.L. 2001-352 (SB 278) creates a new section in the criminal law chapter for the theft of motor fuel valued at less than \$1,000 from a retail establishment. The offense is still a Class 1 misdemeanor, as under previous law, but this act creates an additional penalty. In addition to the fine and imprisonment authorized for Class 1 misdemeanors, the court is required to report final convictions of this offense to

the Division of Motor Vehicles. The DMV is then required to revoke a person's driver's license for a second or subsequent conviction of this offense. The period of revocation depends on the number of prior convictions a person has within the past seven years for the same offense. For a first conviction, there is no additional penalty. For a second conviction, the person's license shall be revoked for 90 days. For a third or subsequent conviction, the person's license shall be revoked for six months. A judge may allow a person who has been convicted for theft of motor fuel a second or subsequent time to obtain a limited driving privilege for a period not to exceed the period of revocation.

The act became effective on December 1, 2001 and applies to offenses committed on or after that date. (TG)

## **Malicious Conduct by Prisoner**

S.L. 2001-360 (S1081) (KCB) creates a new offense for persons who are in the custody of the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention or any local confinement facility, and who knowingly and willfully throw, emit, or cause to be used as a projectile bodily fluids or excrement on an employee of the facility while the employee is in the performance of his or her duties. The act applies to violations that occur both inside and outside of the facility. Violation of this act is punishable as a Class F felony.

The act became effective December 1, 2001, and applies to offenses committed on or after that date. (KCB)

## **Notify DWI Lienholders Immediately**

S.L. 2001-362 (HB 1217). See **Transportation**.

## **Sex Offender Registration/Conform with Federal Law**

S.L. 2001-373 (SB 936) amends the sex offender registration statutes in order to comply with federal law. The act adds two new classes of offenders, those who are recidivists and those who commit aggravated offenses. These offenders must register for life rather than the 10-year period.

An "aggravated offense" is defined as a criminal sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or threat of violence, or involving vaginal, anal or oral penetration with a victim who is less than 12 years old. A "recidivist" is anyone who has a prior conviction requiring sex offender registration.

The act requires a person who is a nonresident student or nonresident worker in this State to register in the county where the person attends school or works. A sheriff who receives notice from a registrant that the registrant is moving to another state must provide the registrant with notice that they must comply with the new state of residence's registration requirements and must also provide the registrant's new address to the Division of Criminal Statistics of the Department of Justice, so the Division may inform the appropriate state official in the state to which the registrant moves of the person's new address.

The act adds two new members to the board of experts who conduct presentencing studies of defendants to determine whether they are sexually violent predators. The two new members are to be selected by the Department of Correction, but one must be a victims' right advocate and one must be a representative of law enforcement agencies.

The act repeals the statutory provisions that allowed a person required to register for life to petition the court to have their names removed from the sexual offender registry after 10 years of good behavior and provides that the person's name may not be removed from the registry unless the conviction requiring registration is reversed, vacated, or set aside, or if the person has been granted an unconditional pardon of innocence for the offense requiring registration.

The act also clarifies that a person residing in North Carolina who was convicted in a military court of a sex offense must comply with the State's registration requirements.

The act became effective October 1, 2001 and applies to offenses committed on or after that date. (SS)

## **Private Correctional Officers**

S.L. 2001-378 (S137) authorizes correctional officers and security supervisors employed by private correctional facilities under contract to the Federal Bureau of Prisons to use necessary force and make arrests in a manner consistent with that used by employees of the North Carolina Department of Corrections. The Department of Corrections must determine that the private corporation's employment practices meet the minimum standards followed by the Department in hiring its own personnel. In addition, either the private employees must be certified by the North Carolina Criminal Justice Education and Training Standards Commission, or the private corporation must satisfy the Department of Corrections that the private employees have completed a training curriculum that meets or exceeds that of the Criminal Justice Education and Training Standards Commission for correctional officers. The act also provides that the private corporations shall (1) defend, indemnify and hold harmless the State from any claims arising out of the operation of the facility; (2) reimburse the State and any locality for the full cost of any additional expenses incurred in connection with the pursuit and apprehension of an escaped inmate from the facility; (3) notify the sheriff in the county where the facility is located and the Department of Corrections, in the event of an escape from the facility; (4) maintain liability insurance with a minimum level of \$10,000,000 per occurrence; and (5) bear the costs of services provided by the Department of Corrections to the corporation.

The act became effective August 7, 2001, and applies to private correctional facilities constructed and contracted to be operated by the effective date and expires two years after the effective date. (KCB)

## **Require Experience for Death Penalty Cases**

S.L. 2001-392 (SB 109) requests the Supreme Court to adopt rules designed to improve the State's capital punishment system by establishing minimum standards of training and experience for defense attorneys, prosecutors, and judges involved in capital cases. The rules should specify required years of legal experience, trial experience, and specialized training. The act amends the statute covering the responsibilities of the Commission on Indigent Defense Services to reflect rules created by this request. The Commission on Indigent Defense Services is charged with creating rules for attorneys representing indigent defendants, including capital cases. This act would require those rules to be consistent with any rules created by the Supreme Court for prosecutors and judges.

The act became effective August 26, 2001. (SS)

## **Harm or Hinder Law or Assistance Animals**

S.L. 2001-411 (SB 646) expands the animal cruelty statutes as it relates to law enforcement agency and assistance animals and as it pertains to restraining dogs. Prior to enactment of this bill, G.S. 14-163.1 made it a criminal offense to willfully, and not in self-defense, cause serious injury to, maim, or kill a law enforcement animal. The bill expands G.S. 14-163.1 to assistance animals (defined as an animal that is trained and may be used to assist a handicapped person) and makes it a criminal offense to cause "serious physical harm" to either law enforcement agency or assistance animals. "Serious physical harm" is specifically defined as creating a substantial risk of death, causing maiming or substantial loss or impairment of bodily function, or causing acute pain of a duration that results in substantial suffering. Violation of the statute is a Class I felony, punishable by up to 15 month's active/intermediate punishment (presumptive minimum is 4-6 months' community punishment). This



offense would not apply to a licensed veterinarian acting in accordance with the law, and self-defense would be an affirmative defense.

The bill also adds the following crimes to law:

- Willfully causing or attempting to cause any physical harm to a law enforcement animal or assistance animal (Class 1 misdemeanor, punishable by a maximum of 120 days C/I/A). "Physical harm" is defined as any injury, illness, or other physiological impairment.
- Willfully taunting, teasing, harassing, delaying, obstructing, or attempting to delay or obstruct a law enforcement or assistance animal in the performance of its duty (Class 2 misdemeanor, punishable by a maximum of 60 days C/I/A).
- Maliciously restraining a dog using a chain or wire grossly in excess of the size necessary to restrain the dog safely (Class 1 misdemeanor, punishable by a maximum of 120 days C/I/A).

The act became effective December 1, 2001, and applies to offenses committed on or after that date. (DJ)

## **Drug Treatment Court Program Changes**

S.L. 2001-424, Sec. 22.8 (SB 1005, Sec. 22.8), as amended by S.L. 2001-487, Sec. 114 (HB 338, Sec. 114), authorizes family drug treatment courts to serve addicted parents of abused and neglected children, and to serve substance-abusing juvenile offenders who come under the courts' jurisdiction. The act specifies that local drug treatment court programs established and funded by the State may consist of adult, juvenile, or family court programs, or any combination of the three. Membership of local drug treatment court management committees is expanded to include an attorney representing a county department of social services, a representative of the guardian ad litem program, a member of the private bar who represents respondents in social services juvenile matters, the director or member of child welfare services in a county department of social services, the chief juvenile court counselor, a representative of the local school administrative unit, and a representative of the area mental health program. The Drug Treatment Court Program Changes became effective October 1, 2001.

Effective July 1, 2001, the act authorizes the Judicial Department to seek non-State funds and provide technical assistance for implementing a drug treatment court program in the Judicial Districts 3B and 28. (BC)

## **Collection of Local Traffic Law Enforcement Statistics**

S.L. 2001-424, Sec. 23.7 (SB 1005, Sec. 23.7), amends the duties of the Division of Criminal Statistics as set out in G.S. 114-10(2a) by requiring the Division to publish and distribute by December 1 of each year a list indicating the law enforcement officers that will be subject to the collection of information regarding traffic law enforcement. Law enforcement officers subject to the requirement include all State law enforcement officers, as well as law enforcement officers employed by the following: county sheriffs or county police departments; police departments in municipalities with a population of 10,000 or more persons; and police departments in municipalities employing five or more full-time sworn officers for every 1,000 in population, as calculated by the Division for the calendar year in which the stop was made.

The change became effective on September 26, 2001, and applies to law enforcement actions occurring on or after January 1, 2002. (BC)

## **Teen Court Guidelines Codified**

S.L. 2001-424, Sec. 24.8 (SB 1005, Sec. 24.8), amends the statutes pertaining to the Department of Juvenile Justice and Delinquency Prevention by adding a new section regarding teen court programs. The act provides that teen court programs administered by the Department of Juvenile Justice and Delinquency Prevention operate as community resources for the diversion of juveniles. A juvenile

diverted to a teen court program will be tried by a jury of other juveniles, and, if the jury finds the juvenile has committed the delinquent act, the jury may assign the juvenile to a rehabilitative measure or sanction, including counseling, restitution, curfews, and community service. Teen court programs may also operate as resources to the local school administrative units to handle problems that develop at school but that have not been turned over to the juvenile authorities. Every teen court program that receives State funds is required to comply with rules and reporting requirements of the Department of Juvenile Justice and Delinquency Prevention.

This section became effective July 1, 2001. (BC)

## **Earned Time Credit for Mentally/Physically Unfit Inmates**

S.L. 2001-424, Sec. 25.1 (SB 1005, Sec. 25.1). See **State Government**.

## **Extend Limits of Confinement/Term. III & Disabled Inmates**

S.L. 2001-424, Sec. 25.9 (SB 1005, Sec. 25.9). See **State Government**.

## **Crime Victims' Rights Act Amendments**

S.L. 2001-433 (HB 1154) amends the Crime Victims' Rights Act and makes other changes to the rights of victims of crime in North Carolina. The act makes it clear that facilities designated for the custody and treatment of involuntary clients are "custodial agencies" under the Crime Victims' Rights Act. It amends the victim notification requirements for the investigating law enforcement agency to include the defendant's name in addition to the victim's identifying information. This section also amends the form that the victim fills out notifying the law enforcement agency if they want additional information to clarify that the further notices include the status of the accused during the pretrial process. The act amends G.S. 15A-832 to require that the form, regarding victim's desire for notice, the district attorney's office is required to include with a final judgment and commitment also be included with a judgment suspending sentence. The Clerk of Superior Court is made responsible to transmit the form to the custodial agency. It also creates a new G.S. 15A-832.1 applicable when an arrest warrant for certain domestic violence crimes is issued based on evidence of a complaining witness rather than a law enforcement officer. It requires the judicial officer to record the defendant's name and the victim's contact information on a separate form from the arrest warrant. This may be done electronically. The form will be developed by the Administrative Office of the Courts. This is delivered to the Clerk by close of the next business day. The Clerk must forward the victim identity form to the District Attorney as soon as practicable, but within 72 hours. The act amends G.S. 15A-833 to allow a representative of the district attorney's office or a law enforcement officer (rather than the victim) to proffer evidence of the impact of a crime at the victim's request and with the defendant's consent. The legislation deletes the requirement that the conference of District Attorneys maintain a repository of victim information and adds a requirement that the victim be given a telephone number of offices to contact in the event restitution isn't paid. It requires a custodial agency to notify a victim within 24 hours of a defendant's escape from custody if the victim has notified the agency that the defendant has issued a specific threat against the victim (otherwise the notice is required within 72 hours). The act requires the Division of Adult Probation and Parole to notify the victim of the location, as well as the date, of any hearing regarding defendant's supervision, and requires the Department of Corrections, at the request of the victim, to prohibit inmates convicted of victims' rights act offenses from contacting the requesting party. Finally, the act creates a new G.S. 148-5.1 requiring the Department of Corrections, at the request of a victim or immediate family member of a victim, to make a reasonable effort to house an inmate outside the county where the victim or family member resides or is employed. If the inmate is not so housed, the Department shall notify the victim or family member in writing.

The act became effective October 1, 2001. (SR)

## **Terrorism Defense Funds**

S.L. 2001-457 (HB 1471). See **Anti-Terrorism**.

## **Possessing Fraudulent ID to Get Liquor**

S.L. 2001-461 (SB 833) creates a new criminal offense of possession or manufacture of fraudulent forms of identification. The act makes it a Class 1 misdemeanor to "knowingly" possess or manufacture a false or fraudulent form of identification for the purpose of deception, fraud or other criminal conduct and makes it unlawful for any person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent information. The offense specifically applies to certain forms of identification including a picture: State, local, federal, or other state government issued IDs, military IDs, passports, or alien registration cards.

The act amends the underage drinking laws to specifically make it unlawful to use fraudulent identification to enter a place that serves alcoholic beverages or to obtain permission to purchase alcoholic beverages, and to use forms or means of identification that give the impression that the person is entitled to purchase alcoholic beverages.

The act creates the Drivers License Technology Fund in the Department of Transportation to establish a DMV electronic interactive drivers license verification system for use by retail merchants and ABC permit holders. The electronic system will allow a retailer or other person holding an ABC permit to verify the validity of a drivers license or identification card issued by the Division and the date of birth of the person issued the drivers license or identification card. A retailer or permittee using the electronic system will be responsible for the costs of the equipment and communication lines needed by the retailer or permittee to access the system. The electronic system will not be operated until such time as the Drivers License Technology Fund contains sufficient funds to meet the purposes of the act, and will operate only for so long as adequate funds are available.

The provisions of the act related to criminal offenses became effective December 1, 2001 and apply to offenses committed on or after that date. The provisions of the act related to the Drivers License Technology Fund became effective when the act became law on November 14, 2001. (BC)

## **Certain Weapons of Mass Destruction**

S.L. 2001-470 (HB 1468). See **Anti-Terrorism**.

## **Minimum Bail Bond After Failure to Appear**

S.L. 2001-487, Sec. 46.5 (HB 338, Sec. 46.5) amends the bail bond law for the minimum bond required when a defendant fails to appear in court to answer a criminal charge. The section repeals that portion of G.S. 15A-540(c) that required a judge to set bond at twice the amount of the original bond when no prior conditions for release had been set for a person surrendered by a surety for failing to appear. The section adds a new requirement in all cases where a defendant fails to appear, whether surrendered by a surety or otherwise, that the previous conditions of pretrial release be reimposed, and if no previous conditions existed, to require a bond in an amount of at least double the original bond, and if no bond had originally been required, a minimum bond of \$500.

This section became effective December 16, 2001. (WR)

## **Criminal Justice Standards Commission Change**

S.L. 2001-490 (SB 68) makes changes to the membership of the North Carolina Criminal Justice Education And Training Standards Commission as recommended by the Joint Legislative Corrections and Crime Control Oversight Committee. The membership of the Commission will now specifically include the Secretary of Juvenile Justice and Delinquency Prevention, and the Commission is increased from 26 to 33 members. The additional appointments will be made as follows: two additional citizen members appointed by the General Assembly; four correctional officers employed by the Department of Correction in management positions - two from the Division of Community Corrections upon the recommendation of the Speaker of the House of Representatives and two from the Division of Prisons upon the recommendation of the President Pro Tempore of the Senate; one correctional officer employed by the Department of Correction and assigned to the Office of Staff Development and Training appointed by the Governor.

The act redefines the types of officers subject to minimum education and training standards by deleting revenue law enforcement officers, reinstating correctional and probation/parole officers, including surveillance officers, and by adding juvenile justice officers and juvenile court counselors. The act makes it clear that the enforcement power of the Criminal Justice Education and Training Standards Commission includes the authority to issue orders forbidding criminal justice officers from exercising their arrest and enforcement powers.

The act became effective June 30, 2001. (BC)

## **Penalty for Filing False Statutory Lien**

S.L. 2001-495 (SB 912). See **Property, Trusts, and Estates**.

## **Strengthen Littering Laws**

S.L. 2001-512 (SB 1014). See **Environment and Natural Resources**.

## **Amend Stalking/Domestic Violence Laws**

S.L. 2001-518 (SB 346) amends the stalking law to prohibit a broader category of behavior and to increase the criminal penalty for stalking. The bill also expands the Crime Victims' Rights Act to include victims of felony stalking, makes changes to the domestic violence statutes, and increases the punishment for felonies committed after a domestic violence protective order is in place.

Prior to passage of this bill, a person committed the offense of "stalking" if that person willfully and on more than one occasion followed or was in the presence of another person without a legal purpose with the intent to cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury. Stalking was a Class 1 misdemeanor, and if a person committed stalking while a court order was in effect prohibiting similar conduct, it was a Class A1 misdemeanor. The bill expands "stalking" to include harassment and acts designed to place a victim in reasonable fear either for the victim's safety or that of the victim's immediate family or close personal associates. The bill also prohibits harassment that is intended to cause, and does cause, substantial emotional distress by placing the victim in fear of bodily harm. The terms "harass" and "harassment" are defined to include most types of communications that torment, terrorize or terrify a victim. The bill increases the class of the offense of stalking to a Class A1 misdemeanor, punishable by a maximum of 150 days community/intermediate/active punishment, and where a court order is in effect prohibiting similar behavior, a violator will be punished as a Class H felon (maximum punishment 30 months). A recidivist will be punished as a Class F felony, with a maximum punishment of 59 months. Under the bill, victims of felony stalking will be covered under the Victims' Rights Act, Article 46 of Chapter 15A, entitling those victims to the resources and notices in that Act.

The bill also makes the following changes to domestic violence law:

- Amends G.S. 15A-534.1(a) to add to the list of domestic violence crimes drawing special conditions of bail and pretrial release, the following categories of felonies when committed upon a victim group: Rape/Sex Offenses (Article 7A), Assaults (Article 8), Kidnapping/Abduction (Article 10), or Arson (Article 15).
- Makes a conforming change to the domestic violence definition from Chapter 50B. For purposes of Chapter 50B, domestic violence will include acts that place a victim group in fear of continued harassment at a level inflicting substantial emotional distress.
- Amends the statute governing the expiration of ex parte orders by magistrates in a domestic violence case so that the orders no longer expire within 72 hours. Instead, the order's expiration and the ex parte hearing before the district court judge will be scheduled for the next day on which the district court is in session. This change eliminates the need for the aggrieved party to return to court every 72 hours, even if there is no district court judge available.
- Expands the punishment for violating a domestic violence protective order (50B order). Under the bill, a person committing felonious acts prohibited by a known existing 50B order will be punished at one higher felony class, unless the felonious act is punishable as a Class A or B1 felony. Any person who knowingly violates a 50B order after having been previously convicted of three Chapter 50 offenses will be guilty of a Class H felony, with a maximum punishment of 30 months.

The act became effective March 1, 2002 and applies to offenses committed on or after that date.

(DJ)

## **Major Pending Legislation**

### **Expand Child Abuse Definition**

HB 93 would expand the definition of child abuse to include cases where a caretaker or other person persistently fabricates or misrepresents medical illness in the child in order to obtain otherwise unnecessary medical care. The current version would make such abuse a Class G felony. The bill has passed the House and is pending in the Senate. (SS)

### **Concealed Handgun Permit Reciprocity**

HB 442 would provide reciprocal concealed handgun rights to concealed handgun permit holders of other states under certain conditions. The bill has passed the House and is pending in the Senate. (SS)

### **Firearm Regulation Amendments**

HB 622 would declare that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se. The bill would also provide that the authority to bring suit against any firearm or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit for remedies resulting from or related to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. The bill has passed the House and is pending in the Senate. (SS)

## **Increase Misdemeanor Child Abuse Penalty**

HB 904. See **Children and Families**.

## **Close Incest Loophole to Protect Minors**

HB 1276. See **Children and Families**.

## **Physician-Assisted Suicide/Education & Crime**

SB 390 would create a Class D felony offense for physician-assisted suicide. The bill would also require the North Carolina Medical Board to implement policies to train and educate persons licensed to practice or persons desiring to practice medicine in this State on issues related to physician-assisted suicide. The bill has passed the Senate and is pending in the House. (SS)

## **Lawful Firearms Activities Protected**

SB 680 would provide that only the State may bring certain civil actions against firearms or ammunition marketers, manufacturers, distributors, dealers, sellers, or trade associations (similar to H622). The act would also amend the law regarding concealed handgun permit fees and provide reciprocal concealed handgun rights to concealed handgun permit holders of other states under certain conditions (similar to H442). The bill has passed the Senate and House and has been referred to Senate Judiciary II. (SS)

## **Sentencing Enhancement Changes/Sent. Comm.**

SB 746 amends the law regarding enhanced sentences as recommended by the Sentencing Commission. The bill has passed the Senate and is pending in the House. (SS)

## **Studies**

### **Legislative Research Commission**

#### **The 2001 Studies Bill**

S.L. 2001-491, Secs. 2.1(6) and 2.1(12) (SB 166, Secs. 2.1(6) and 2.1(12)) authorizes the Legislative Research Commission to study the following criminal law and juvenile issues:

- Consolidation of law enforcement agencies.
- Establishing procedures in the juvenile code for juveniles who lack the capacity to proceed.
- Juvenile commitment procedures.
- Allowing counties to appeal certain orders in juvenile court.

The act became effective December 19, 2001. (SS)

## Referrals to Existing Commissions/Committees

### North Carolina Sentencing and Policy Advisory Commission

S.L. 2001-424, Sec. 25.8 (SB 1005, Sec. 25.8) directs the North Carolina Sentencing and Policy Advisory Commission (Commission) to study and review the State's sentencing laws in view of the projected growth in the prison population by the year 2010. The areas of review may include classification of offenses, relationship of the sentence and sentence length to the offense and the sentence dispositions available to judges. The Commission is also to analyze the parole eligible population in terms of offenses committed, sentence, and time served in comparison to inmates sentenced under structured sentences. The Commission shall develop alternatives for consideration by the General Assembly and report its findings to the 2001 General Assembly no later than the convening of the 2002 Regular Session of the 2001 General Assembly. This section became effective July 1, 2001. (BR)

### Incest Penalty Study

S.L. 2001-491, Part VII (SB 166, Part VII) authorizes the North Carolina Sentencing and Policy Advisory Commission to study the current punishments for violations of the incest laws to determine whether those punishments are consistent with other punishments for sex offenses. The Commission may also study the incest statutes' application to acts between related minors. The Commission may report its findings to the General Assembly prior to the convening of the 2002 Regular Session of the 2001 General Assembly.

This part became effective December 19, 2001. (SS)

### Sentencing and Policy Advisory Commission Studies

S.L. 2001-491, Part XXI (SB 166, Part XXI) authorizes the North Carolina Sentencing and Policy Advisory Commission to study the following topics, and report its findings to the 2002 Regular Session of the 2001 General Assembly:

- Second Degree Arson Penalty Study.
- Habitual Felon Law Study.
- Drug Offenses.
- Penalties for Detonation of Explosive Devices.

This part became effective December 19, 2001. (SS)

*Chapter 9*  
*Education*

Dee Atkinson (DA), Shirley Iorio (SI), Robin Johnson (RJ),  
Sara Kamprath (SK) and others (See references by initials  
on page 269 of this publication.)

**Enacted Legislation**

**Public Schools**

**Unlawful to Impede a School Bus**

S.L. 2001-26 (SB 45). See **Criminal Law and Procedure**.

**Special Diploma for World War II Veterans**

S.L. 2001-86 (HB 979) directs the State Board of Education to issue a special high school diploma to any honorably discharged World War II veteran who has not already received a diploma and requests the special diploma.

The act became effective May 17, 2001. (SI)

**Amend School Classifications**

S.L. 2001-97 (HB 15) authorizes a local board of education to organize the schools within its system. The act also amends the recommended school classifications by setting out the grades associated with each classification and by adding a new classification of middle school. Local boards of education may use other means to classify schools.

The act became effective July 1, 2001. (RJ)

**School Employee Health Certificate**

S.L. 2001-118 (HB 608) amends G.S. 115C-323 by codifying, in the public school laws, the authority that North Carolina licensed nurse practitioners and physician's assistants already have to prepare health certificates. The act clarifies that not only a NC licensed physician but also a NC licensed nurse practitioner or physician's assistant may prepare the health certificates that all public school employees are required to submit to their superintendent.

In addition, the act allows newly hired individuals coming from other states to have their health certificates prepared by a licensed physician, nurse practitioner, or physician's assistant in the state where they are living at the time of the offer of employment. Currently, more than 50% of the newly hired teachers in North Carolina come from out-of-state.

The act became effective May 25, 2001. (SK)



## **Delay Praxis II Test for New Teachers**

S.L. 2001-129 (HB 1285) extends the amount of time new teachers have to pass their certification exams. New teachers will now have until the end of their second year of teaching to pass the required PRAXIS II content area test(s). However, teachers are required to take the test at least once prior to or during their first year of teaching.

The act became effective May 25, 2001. (SI)

## **Encourage Teacher Education/Active Military**

S.L. 2001-146 (SB 803) directs the UNC Board of Governors, the State Board of Community Colleges, and the Department of Public Instruction to work together to expand the opportunities for military personnel to enroll in and complete teacher education programs prior to discharge from the military.

This cooperative effort shall focus on the educational needs unique to active military personnel who are potential teachers or teacher assistants, and, as feasible, shall expand teacher education classes and programs on military bases and at nearby sites through Internet-based course offerings, and through cooperative education programs.

A special effort must be made to communicate with and inform military personnel of these educational opportunities.

The act became effective May 31, 2001. (RJ)

## **Reduce School Paperwork**

S.L. 2001-151 (SB 708) directs the State Board of Education to adopt rules to ensure that the Board, State Superintendent, or the Department of Public Instruction do not require local school systems to:

- provide information that is already available on the student information management system or housed within DPI,
- provide the same written information more than once during a school year unless the information has changed, or
- complete forms for children with disabilities that are not necessary for compliance with the federal IDEA law.

However, the State Board may require the above information if there is a compelling need or there is not a faster or more efficient way of getting the information.

The act became effective July 1, 2001. (SK)

## **School Policies on Harassment of Employees**

S.L. 2001-173 (HB 1149) authorizes each local board of education to adopt a policy addressing sexual harassment of school employees by students, by other school employees, or by board members. The policy may set out the consequences of sexually harassing school employees and a procedure for reporting incidents of sexual harassment.

The act also revises existing language that prohibits retaliation against an employee who alleges sexual harassment. The changes clarify that local board members and school employees with supervisory authority are prohibited from discharging, threatening or otherwise retaliating against the employee who reports sexual harassment. The protection against retaliation does not apply if the employee "knew or should have known" that the claim of sexual harassment was false.

The act became effective July 1, 2001. (SI)

## Education Degree Not Required/Local Superintendent

S.L. 2001-174 (SB 378) allows an individual who has leadership, management, and administrative experience in a field other than education to serve as a local superintendent of schools. The State Board of Education can no longer require a superintendent to have experience as an educator, an education degree, or certification as an educator. The State Board rules and policies no longer apply, so the State Board must adopt new rules and policies.

The act became effective July 1, 2001, and applies to superintendents elected after that date. (RJ)

## Suspended Students Assigned to Alternative Programs

S.L. 2001-178 (SB 71) directs the State Board of Education, in cooperation with the Department of Juvenile Justice and Delinquency Prevention (Department), to establish a pilot program for up to five participating school systems. Under the pilot, the participating systems would agree to place students who are suspended from school for up to 10 school days in alternative learning programs, day reporting centers, or other similar supervised day programs during their suspension.

**Application/Selection:** The act directs the State Board of Education and the Department of Juvenile Justice and Delinquency (Department) to develop an application process to encourage local boards of education to apply for the pilot program. The Superintendent of Public Instruction and the Secretary of the Department select the participating units.

**Plan Development:** Under current law, principals may suspend for a maximum of 10 school days any student who violates a local school administrative unit's conduct policies. These are known as "short-term suspensions". A student, whose misconduct is of a more serious nature that may lead to a longer term of suspension or an alternative placement, can be placed initially on a short-term suspension while the school is making that decision. (Federal law and policies specifically address the discipline and placement of children with disabilities.) A student may be placed on an "in-school suspension" or an "out-of-school suspension."

The act requires a participating board of education, in consultation with the chief court counselor, to develop and adopt a plan for the alternative placement of all students who are given a short-term, out-of-school suspension. Placement may be in alternative learning programs, day reporting centers, and other similar supervised programs for juveniles. Structured day programs, such as day reporting centers, currently serve juveniles who may be under court supervision or on probation for misdemeanors or felonies.

However, the plan may exclude some or all students who are on a short-term, out-of-school suspension pending a decision for long-term suspension and students with disabilities where it would be an inappropriate placement.

**Plan Components:** The goal of the plan shall be the successful reentry of students into the regular school setting. Each plan would include a detailed plan for placing and transporting students, ensuring the students' participation in the alternative placement, facilitating communication between the school and the alternative placement, providing opportunities for the students to make up coursework, and providing opportunities for parent involvement. The plan also would identify resources to implement the plan, state the plan's goals and anticipated outcomes, and include an annual assessment process.

**Funding/Resources:** The act allows participating units to delay implementation until they determine the availability of adequate funds. If a unit determines there are insufficient funds for implementation, the local superintendent would be directed to notify the State Board of Education so it can select another participating unit. The pilots, State Board of Education and the Department shall implement the alternative settings within existing State Resources, by redirecting State resources and by using non-State funds.

The act also allows the Department and the Juvenile Crime Prevention Councils to use their programs, employees, funds and other resources to meet the needs of students placed in alternative settings. To the extent practicable, the pilots shall have separate programs or classrooms for the suspended students and violent adjudicated offenders.

***Contracts with other entities for alternative placement services:*** The act allows participating boards to contract with nonprofit corporations and other governmental entities to provide the alternative placement services. Nonprofits that contract with the participating units would be required to obtain adequate liability insurance to cover claims arising from the provision of services by the nonprofit.

Under general agency law, school boards and their employees and officers are not liable for matters that occur in programs that are not under their direct control and supervision. A question could arise, however, concerning their liability if an "agency" relationship is created. School boards and their officers also are generally immune from liability (primarily for alleged negligence) unless they have purchased liability insurance that would cover the action.

***Student absences from alternative placement:*** The act specifies that local policies governing promotion and course credits would govern the treatment of student absences from the alternative setting. If the participating unit determines attendance in this setting is mandatory, then the compulsory attendance law would apply.

***Report required:*** The Department of Public Instruction and the Department must report to the Joint Legislative Education Oversight Committee on the implementation and effectiveness of the pilot program and any recommendations for expanding the program statewide. The report is due by April 15, 2003.

The act became effective June 7, 2001. (SK)

## Grandparents as Supervising Drivers

S.L. 2001-194 (HB 78). See **Transportation**.

## Records of School Suspension May Be Retained

S.L. 2001-195 (HB 620) amends G.S. 115C-402 (student records) by modifying when a notice of long-term suspension (10 or more days) or expulsion may be removed from a student's permanent record. Removal of the notice would only occur:

- After the student graduates or after two years of "good behavior",
- The student (who must be at least 16 or emancipated) or the student's parent, legal guardian, or custodian requests the notice be removed, and
- The superintendent or the superintendent's designee determines that keeping the record is no longer needed to (i) maintain safe and orderly schools and (ii) adequately serve the child. Each local board's policy on student records would have to include information on the expungement procedure.

The superintendent is also authorized to remove the notice without having received a request if all the other conditions are met.

The act also amends G.S. 115C-391(f), which is part of the statute governing student discipline, suspensions, and expulsions, and requires that local boards have clear student conduct policies. The policies must now provide that when notice is given to students or parents of a long-term suspension or an expulsion, the notice must also identify the information that will be placed in the student's official record and the procedure for expunging that information.

The act became effective June 13, 2001 and applies beginning with the 2001-2002 school year. (SI)

## Parent of Suspended Student/Adequate Notice

S.L. 2001-244 (SB 811), as amended by S.L. 2001-500 (SB 990), amends G.S. 115C-391 by adding a new subsection to require local boards of education to give a parent or guardian notice of a student's rights when a student has been expelled or suspended for more than 10 days. The notice shall be written in English and in the parent's or guardian's first language (if not English) when appropriate foreign language resources are readily available. The notice shall also be written in plain language that is easy to understand.

The act became effective July 1, 2001 and applies to disciplinary actions initiated on or after that date. (SK)

## Clarify School Board Appeals/Noncertified Employees Notice

S.L. 2001-260 (SB 532), as amended by S.L. 2001-500 (SB 990), limits school decisions that may be appealed to local boards of education and to superior court. (Previous law granted all individuals the right to appeal any decision of school personnel to the local board of education and subsequently to superior court.) Under this act, only the following final administrative decisions allow for an appeal of right to the local board:

1. A disciplinary decision resulting in:
  - A student suspension of at least 10 days;
  - A student expulsion (permanent removal from school) or permanent placement in an alternative setting;
  - A 365-days suspension or alternative placement of a student who brings a weapon (primarily guns/bombs) to school or to a school-sponsored activity, who makes a false bomb threat, or who physically assaults another person at school or at a school-sponsored activity;
  - A maximum 365 days suspension of a student who: makes a false report of a device, substance, or material at school or at a school-sponsored activity designed to cause harmful or life-threatening illness or injury to another; perpetrates a hoax by concealing, placing, displaying, or disseminating a device, machine, instrument, artifact, letter, package, material or substance at school or at a school-sponsored activity to cause a person to reasonably believe it is capable of causing harmful or life-threatening illness or injury to another; threatens to commit an act of terrorism at school or at a school-sponsored activity likely to cause serious injury or death and intending the threat to cause a significant disruption to the instructional day or activity; makes a false report of an act of terror at school or at a school-sponsored activity likely to cause serious injury or death and intending the report to cause significant disruption to the instructional day or activity; or conspires to commit any of these acts.
2. An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including any policy regarding grade retention of students.
3. The terms or conditions of an employee's employment or employment status.
4. Any other decision, which by statute specifically provides for a right of appeal to the local board and for which there is no other statutory appeal procedure.

The act also provides for an appeal to the local superintendent by any other individual who is aggrieved by decisions of school personnel for which there is no automatic right to appeal to the board. After an appeal to the superintendent, the individual may petition the board for a hearing, which the board may grant. The board must notify the individual of its decision whether to grant a hearing.

The act also provides noncertified employees with the right to be given written notice of the grounds for the superintendent recommending that the employee be dismissed, demoted, or suspended without pay.

The act became effective July 1, 2001, and applies to final administrative or school board decisions made on or after that date. (RJ)

## **School Assignment/Child in Pre-Adoptive Home**

S.L. 2001-303 (SB 836) allows children who reside in pre-adoptive homes to use their place of residence (the pre-adoptive home) instead of their place of domicile for purposes of public school assignment.

The act became effective July 21, 2001. (SI)

## **N.C. History Taught/Student Citizen Act of 2001**

S.L. 2001-363 (HB 195) requires two yearlong courses in North Carolina history and geography – one in elementary school and one in middle school. The act also creates the 'Student Citizenship Act of 2001,' which directs the State Board of Education to modify the high school and middle school social studies curriculum to give students instruction in civic and citizenship education, requires local boards to get input from the local community as they develop and implement character education instruction, requires local boards to include a reasonable dress code policy in their student conduct policies, and sets parameters for displays of historical objects and documents when words associated with a religion (such as the Ten Commandments) are included.

The act became effective August 10, 2001, and applies to all school years beginning with the 2001-2002 school year. However, the modifications to the social studies curriculum must be completed by December 15, 2001, and implemented during the 2002-2003 school year, and local boards must develop character education instruction by January 1, 2002, and implement that instruction beginning with the 2002-2003 school year. Local boards may submit to the State Board of Education requests for an extension by April 1, 2002. (RJ)

## **Criminal History Checks of School Employees**

S.L. 2001-376 (SB 778) clarifies that a local board of education may delegate to the superintendent certain responsibilities regarding criminal history record checks of applicants for employment. These duties include the review of the information and a determination as to whether the applicant is suitable for the position of employment. It allows the superintendent to give to the State Board of Education copies of any criminal history record that the local board receives regarding an individual who is certified or licensed by the Board.

The act also creates a Class 1A misdemeanor if an applicant for employment provides false information that is the basis for a criminal history record check.

Workdays performed while conditionally employed pending a criminal history record check count when computing time as a probationary teacher.

The act became effective August 17, 2001. (SK)

## **Development of More At Four Pilot Program**

S.L. 2001-424, Sec. 21.76B (SB 1005, Sec. 21.76B). See **Children and Families**.

## **Create Office of Education Services**

S.L. 2001-424, Sec. 21.80 (SB 1005, Sec. 21.80). See **Children and Families**.

## **Closure of Central North Carolina School for the Deaf at Greensboro**

S.L. 2001-424, Sec. 21.81 (SB 1005, Sec. 21.81). See **Children and Families**.

## **Residential Schools for the Deaf**

S.L. 2001-424, Sec. 21.82 (SB 1005, Sec. 21.82). See **Children and Families**.

## **Preschool Programs for the Deaf**

S.L. 2001-424, Sec. 21.83 (SB 1005, Sec. 21.83). See **Children and Families**.

## **DOT Evaluate the Locations of Proposed Public And Private Schools to Enhance Traffic Operations and Safety**

S.L. 2001-424, Sec. 27.27 (SB 1005, Sec. 27.27). See **Transportation**.

## **Fairness in Testing Program**

S.L. 2001-424, Sec. 28.17 (SB 1005, Sec. 28.17), as amended by S.L. 2001-487, Sec. 116 (HB 338, Sec. 116) amends various laws related to testing and grade retention. The following changes take effect December 1, 2001: (1) Principals must consider a variety of student information, including standardized test scores, when making promotion and retention decisions; however, they may not base their decisions solely on the basis of standardized test scores; (2) Test scores must be verified for accuracy if a retention decision is based on those scores and (3) School systems must identify students who are at risk for academic failure and implement a personal education plan for academic improvement for students in third through eighth grades.

Section 28.17 also made the following changes related to testing and grade retention: (1) Local boards of education must adopt appeal policies that include opportunities for parents and guardians to discuss retention decisions; (2) State Board of Education policies regarding testing of children with disabilities must provide these children broad accommodations, prohibit the use of Statewide tests as the sole determinant of their promotion and graduation, and provide their parents with information about the State testing program and options for their children; (3) Schools may not devote more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning; (4) Field tests or national tests are prohibited during the two-week period preceding the administration of the end-of-grade tests, end-of-course tests, or a school's regularly scheduled final exams; and (5) No school shall participate in more than two field tests at any one grade level during a school year unless the school improvement team votes to participate in more tests or the State Board of Education makes written findings that additional field tests are required to establish the reliability and validity of a specific test.

Section 28.17 also directs the Joint Legislative Education Oversight Committee (Committee) to conduct a broad study of the State's testing program. The State Board of Education must report to the Committee on the current resources to meet the needs of all students subject to the Statewide Student Accountability Standards, the objectives for the testing program, and the benefits of providing students' parents and guardians with copies of tests administered to their children. The Committee must report to the 2002 Regular Session of the 2001 General Assembly.

Except as noted, this section became effective July 1, 2001. (RJ)

## **Abolish the North Carolina Standards Board for Public School Administration**

S.L. 2001-424, Sec. 28.25 (SB 1005, Sec. 28.25), as amended by S.L. 2001-487, Sec. 74 (HB 368, Sec. 74) abolishes the N.C. Standards Board for Public School Administration and transfers its duties relating to the school administrator exam and certification to the State Board of Education.

This section became effective July 1, 2001. (SK)

## **Guidelines for Charter School Enrollment**

S.L. 2001-424, Sec. 28.26 (SB 1005, Sec. 28.26) clarifies the extent to which a charter school can increase its enrollment without the prior approval of the State Board of Education. A charter school may only increase its annual enrollment up to 10% or under planned growth authorized in the charter. The school must continue to obtain prior approval from the State Board of Education for additional enrollment growth under specific circumstances.

This section became effective July 1, 2001. (RJ)

## **Teacher Academy**

S.L. 2001-424, Sec. 28.28(a) (SB 1005, Sec. 28.28(a)) directs the Teacher Academy to include programs focusing on teaching strategies for teachers in at-risk schools during its summer professional development programs.

This section became effective July 1, 2001. (SK)

## **Modify Law Regarding Children with Disabilities**

S.L. 2001-424, Sec. 28.29(a) (SB 1005, Sec. 28.29(a)) amends G.S. 115C-121 by conforming with federal law the groups that must be represented on the Council on Educational Services for Exceptional Children, which is an advisory council to the State Board of Education.

This section became effective July 1, 2001. (RJ)

## **Closing the Achievement Gap**

S.L. 2001-424, Sec. 28.30 (SB 1005, Sec. 28.30) amends the ABC's program by directing the State Board to include, beginning with the 2002-03 school year, a "closing the achievement gap" component. This component would measure and compare the performance of each subgroup of students to ensure that all the identified subgroups are meeting State standards for student performance. The State Board shall report on its plan to include this component to the Education Oversight Committee by January 15, 2002.

The section also requires that the school improvement plans for schools that serve kindergartners and first graders include a plan to prepare students to read at grade level by the second grade. Kindergarten and first grade teachers shall inform parents when a student is not reading at grade level and is at risk of not reading at grade level upon entry to second grade. The State Board is encouraged to identify any appropriate standards from kindergarten, first grade or second grade that could be included in the ABC's model.

The State Board shall adopt a model that local school boards may use to establish local task forces on closing the academic achievement gap. The State Board shall also make an annual report to the Education Oversight Committee and the Commission on Improving the Academic Achievement

of Minority and At-Risk Students on the number of students who have dropped out; been suspended or expelled; or placed in an alternative setting. The data shall be disaggregated.

The section also extends the Commission on Improving the Academic Achievement of Minority and At-Risk Students until its final report to the Education Oversight Committee and the General Assembly by January 10, 2003. The Commission shall make an interim report to the Education Oversight Committee and the General Assembly by April 1, 2002. The Commission shall also report its findings on the additional fiscal resources needed to close the academic achievement gap and keep it closed to the 2002 Session.

(See also **Studies**).

This section became effective July 1, 2001. (SK)

## **Substitute School Personnel/Unemployment Def.**

S.L. 2001-424, Sec. 28.47 (SB 1005, Sec. 28.47) specifies that, for the purpose of unemployment insurance, a substitute teacher or other substitute school personnel is not considered unemployed when not called to work unless the individual is or was a permanent school employee employed as a full-time substitute during the period of time for which the individual is requesting benefits.

This section became effective July 1, 2001. (RJ)

## **Comprehensive Assistance to Continually Low-Performing Schools**

S.L. 2001-424, Sec. 29.3 (SB 1005, Sec. 29.3) amends the ABC's program by creating a new category of schools designated as continually low-performing schools. Continually low-performing schools have received State-mandated assistance and have been designated low performing for at least two out of three consecutive years. To the extent that funding is available, the State Board shall provide progressive assistance and intervention to these schools in order to raise student achievement. The assistance and intervention may include reducing class size, extending teacher and assistant principal contracts, extending the instructional year, and grant-based assistance.

The State Board shall also develop and implement actions to provide assistance and intervention to those schools that have previously received State-mandated assistance and have been designated as low performing for three or more consecutive years or for at least three out of four years.

This section became effective July 1, 2001. (SK)

## **Additions to Local Supts. Plan to Improve Low-Perf. Sch.**

S.L. 2001-424, Sec. 29.4 (SB 1005, Sec. 29.4) amends the law that requires the superintendent to submit annually to the local board of education a plan addressing the needs of any school that is identified as low performing. Each plan must identify how the superintendent and other central office administrators will work with and monitor the school.

This section became effective July 1, 2001. (RJ)

## **To Shorten the Amount of Time Retired Teachers Must Be Retired Before They Return to Work**

S.L. 2001-424, Sec. 32.25 (SB 1005, Sec. 32.25). See **Employment**.



## Local Flexibility Regarding Charter School Teachers

S.L. 2001-462 (SB 139) amends the amount of time that a local public school system must grant to teachers who request a leave of absence to teach in a charter school. Instead of being required to grant a leave for any number of years, the change specifies that a local board of education is now required to grant a one-year leave of absence. In addition, a local board of education would not be required to grant a request for a leave of absence or a request to extend or renew a leave of absence for a teacher who previously has received a leave of absence from that school board.

The act also creates an exception for charter schools approved on or after January 1, 2001, in order to allow their boards of directors to elect no later than 30 days after November 16, 2001, to participate in the Teachers' and State Employees' Retirement System.

The act became effective November 16, 2001, and applies to requests for leaves of absence made on or after that date. (SK)

## Graduated Drivers License Change

S.L. 2001-487, Sec. 51.5 (HB 338, Sec. 51.5). See **Transportation**.

## No Disclosure of Student Info to 3<sup>rd</sup> Parties

S.L. 2001-500 (SB 990) prohibits a person that contracts with a local board of education from selling or using for a business or marketing purpose any personally identifiable student information obtained from the student. This prohibition does not apply if the person obtains the prior written authorization of the student's parent that the information can be used. The authorization must include the parent's original signature, and may not be solicited through the school's personnel or equipment. The term "personally identifiable information" is defined and includes information concerning a student's individual purchasing behavior or preferences. Violation is a Class 2 misdemeanor. If the defendant is a corporation, unincorporated association, partnership, body politic, consortium, or other group, entity, or organization, the fine is \$5,000 for the first violation, \$10,000 for a second violation, and \$25,000 for a third or subsequent violation.

The act also authorizes local boards of education or superintendents to suspend for up to 365 days any student who: (1) makes a false report of a device, substance, or material at school or at a school-sponsored activity designed to cause harmful or life-threatening illness or injury to another; (2) perpetrates a hoax by concealing, placing, displaying, or disseminating a device, machine, instrument, artifact, letter, package, material or substance at school or at a school-sponsored activity to cause a person to reasonably believe it is capable of causing harmful or life-threatening illness or injury to another; (3) threatens to commit an act of terrorism at school or at a school-sponsored activity likely to cause serious injury or death and intending the threat to cause a significant disruption to the instructional day or activity; (4) makes a false report of an act of terror at school or at a school-sponsored activity likely to cause serious injury or death and intending the report to cause significant disruption to the instructional day or activity; or (5) conspires to commit any of these acts. The suspension may be appealed to the local board. It then may be appealed to superior court on the grounds that the board's decision is in violation of constitutional provisions, is in excess of the board's statutory authority or jurisdiction, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious.

Finally, the act adds a provision to the Public Meetings Law, which authorizes local boards of education to formulate emergency response plans to incidents of school violence in closed session. It also adds a provision to the powers and duties of local boards of education authorizing the adoption

of emergency response plans relating to incidents of school violence. And, it excludes from the definition of a public record under the Public Records Law an emergency response plan adopted by a local board of education, a constituent institution of The University of North Carolina, a community college, or a public hospital.

The act became effective December 19, 2001. The first section applies to contracts entered on or after that date. The provisions concerning the 365-days suspension take effect February 1, 2002. (RJ)

## **Higher Education - Community Colleges**

### **Disposal of Community College Property**

S.L. 2001-82 (HB 410) changes the procedures a community college must follow when disposing of real and personal property. It allows the board of trustees of a college to grant a right-of-way or an easement with the prior approval of the Community College System Office. It also allows a college to dispose of personal property without the prior approval of the State Board of Community Colleges (SBCC) and without first making a determination that the personal property is unnecessary or undesirable for the purposes of the institution. The college will still have to obtain the SBCC's prior approval before disposing of any other interest in real property.

The act became effective May 17, 2001. (SI)

### **Community College Audit Procedures**

S.L. 2001-111 (HB 386) directs the State Board of Community Colleges to require its program auditors to use a statistically valid sample size. The Board would need to define that term. In addition the act repeals a requirement that program auditors must use a minimum 25% sample size in their program audits.

The act became effective July 1, 2001, and applies to audits conducted on and after that date. (RJ)

### **Budget Approval Process/Community Colleges**

S.L. 2001-112 (HB 421) modifies the procedure for submitting local budgets to the State Board of Community Colleges by authorizing the State Board to designate a date by which the local boards of trustees would submit their budgets for approval.

The act became effective July 1, 2001. (SK)

### **Clarify Community College Performance Measure**

S.L. 2001-186 (HB 438) amends the law that lists the performance standards the State Board of Community Colleges (SBCC) uses to evaluate each community college. The act requires the SBCC to look at the number of students in a program and what proportion of those students complete the program.

The act became effective July 1, 2001. (SI)

## **GED Credit for Inmates**

S.L. 2001-200 (SB 397) authorizes persons who have custody of prisoners convicted of misdemeanor offenses who are housed in a local correctional facility to approve the prisoners' participation in a general education development diploma program (GED program) or other education, rehabilitation, or training program. The person may revoke this approval at any time. This act also authorizes a sentence reduction for this prisoner's participation in a GED program or other education, rehabilitation, or training program. The sentence reduction would be limited to four days for every 30 days of participation in the program.

The act became effective June 14, 2001. (RJ)

## **Community Colleges May Receive EDA Grants**

S.L. 2001-211 (HB 938) amends G.S. 115D-58.1 by allowing all community colleges to grant a security interest to the Economic Development Administration (EDA) for real or personal property purchased with grants obtained from the EDA.

This act repeals the local acts that enabled Haywood Community College, Roanoke-Chowan Community College, and Brunswick Community College to grant security interests to the EDA. These local acts are repealed because the authority is now statewide.

The act became effective June 15, 2001. (SK)

## **Financial Assistance for Community College Students**

S.L. 2001-229 (HB 431) codifies and also makes modifications to existing budgetary provisions that create the need-based student assistance for Community College students. It allows the State Board of Community Colleges (SBCC) to allocate up to 10% of the assistance to students who do not have financial need, but who are enrolled in low-enrollment programs that prepare them for high-demand occupations. The changes also allow need-based financial assistance to be provided to students who are enrolled in non-curriculum programs and to students who are enrolled at a community college, but have not yet chosen a particular program.

The act became effective July 1, 2001. (SI)

## **Umstead Act Exception/Community Colleges**

S.L. 2001-368 (SB 531) adds a new exemption to the Umstead Act. In order to promote economic development, a community college would be permitted to allow certain businesses to use the college's personnel or facilities, or both, for small business incubators, product testing services, and video conferencing services.

In order for the exemption to apply, the business using the community college personnel or facilities must be located on the campus or within the service area of the college, the board of trustees of the college must specifically approve the use of the facilities or personnel, and the State Board of Community Colleges must adopt rules to implement the act. The term "small business incubators" is defined as new business ventures that are located within a community college's service area and which are not likely to succeed without the support and assistance provided by the college. A community college may not provide services to the business venture for more than 24 months.

The act became effective August 16, 2001. (RJ)

## **Modifications to the State Employee Incentive Bonus Program**

S.L. 2001-424, Sec. 7.2 (SB 1005, Sec. 7.2). See **Employment**.

## **Employment Security Commission Funds/Extend Training and Reemployment Contribution**

S.L. 2001-424, Sec. 30.5 (SB 1005, Sec. 30.5) amends the Employment Security Commission Training and Employment Account that is used by the Department of Community Colleges to provide various worker training programs and equipment. The section changes the triggers that determine whether the account will apply in the next calendar year. The base rate for an employer's unemployment insurance contributions will remain the same whether or not the Training and Employment Account is in effect. The Training and Employment Account was extended from January 1, 2002 to January 1, 2006.

This section became effective July 1, 2001. (SK)

## **Modify Term of Comm. Coll. Faculty Contracts**

S.L. 2001-424, Sec. 30.6 (SB 1005, Sec. 30.6) directs the State Board of Community Colleges to require community colleges to convert all faculty contracts to nine-month contracts covering the fall and spring semesters. Faculty currently employed more than nine months may be placed on supplemental contracts for the summer term. Faculty employed after the effective date must be placed on nine-months contracts with supplemental contracts for the summer term. These changes do not affect faculty salaries.

This section became effective July 1, 2001. (RJ)

## **Maintenance of Plant Operations**

S.L. 2001-424, Sec. 30.13 (SB 1005, Sec. 30.13) amends the method for allocating funds for maintenance of plant operations to community colleges where the out-of-county student head count served on the main campus is greater than 50% of the total student head count. Now each campus that qualifies for the funds shall receive a pro rata share of the available funds.

This section became effective July 1, 2001. (SK)

## **Optional Retirement Program for the North Carolina Community Colleges System**

S.L. 2001-424, Sec. 32.24 (SB 1005, Sec. 32.24). See **Employment**.

## **Higher Education - Universities**

### **Change Education Cabinet Membership**

S.L. 2001-123 (SB 735) amends G.S. 116C-1(b) by adding the President of the North Carolina Independent Colleges and Universities to the membership of the Education Cabinet. The Education Cabinet may ask other education representatives to serve as adjunct members.

The act became effective May 25, 2001. (SK)

### **UNC-Greensboro Parking Jurisdiction**

S.L. 2001-170 (HB 752) authorizes the board of trustees at The University of North Carolina at Greensboro to adopt ordinances regulating parking on identified portions of Greensboro's public streets that are on or next to the campus.

The act became effective June 7, 2001. (SI)

## Parental Trust Fund/Nonresident Participation

S.L. 2001-243 (SB 573) clarifies that nonresidents may participate in the Parental Savings Trust Fund, the State-sponsored college savings plan.

The act became effective July 1, 2001. (RJ)

## Centennial Authority Changes

S.L. 2001-311 (SB 690) provides that the Chancellor of North Carolina State University (NCSU) does not have a conflict when participating on behalf of the Centennial Authority in discussions and voting on business, including contracts, that relates to the interest of N.C. State.

This act also clarifies that any by-law an authority may adopt that conflicts with State law is void and unenforceable.

The act became effective July 28, 2001. (SK)

## BOG Study Admissions/Youths in IHES

S.L. 2001-312 (HB 1246), as amended by S.L. 2001-487, Sec. 76 (HB 338, Sec. 76) directs the Board of Governors (BOG) of The University of North Carolina (UNC), in cooperation with the State Board of Education and the State Board of Community Colleges, to study the measures the UNC constituent institutions use to make admissions, placement, and advanced placement decisions about incoming freshmen. The Board of Governors may make an interim report to the Joint Legislative Education Oversight Committee by March 1, 2002 and shall make a final report by December 1, 2003. It is recommended that the study continue beyond the final report date.

The act also allows a community college president, based on rules established by the State Board of Community Colleges, to permit intellectually gifted and mature youths under the age of 16 to enroll in community college courses. The designated representative from the educational unit where the student had been enrolled also must approve the student's enrollment at the community college.

The act also amends State law to allow youths of any age who are enrolled in an institution of higher education to be employed by the institution provided the employment is not hazardous. "Institution of higher education" is defined as a UNC constituent institution, a community college, or any other college or university that confers post-secondary degrees. Although this act amends State law to allow the employment of these youths regardless of their age, federal law still prohibits the employment of youths under the age of 14.

(See also **Studies**).

The act became effective July 28, 2001. The provision related to youths enrolling in community colleges applies to the 2001-2002 academic year and expires September 1, 2004. (SI)

## Liability Insurance For University Students

S.L. 2001-336 (SB 627). See **Insurance**.

## **UNC Campus Law Enforcement Jurisdiction**

S.L. 2001-397 (HB 972) allows UNC constituent institutions to enter into mutual aid agreements so that one campus' law enforcement agency can provide officers to assist another campus for specific events and under specific circumstances.

The act became effective August 30, 2001. (SI)

## **Veterans' Scholarship Program**

S.L. 2001-424, Sec. 7.1 (SB 1005, Sec. 7.1) amends the definition of the child who is a recipient of a scholarship for the children of war veterans. Now the child must be both a resident of and domiciled in the State when applying for the scholarship. The child must also be a senior in high school who will graduate at the end of the academic year or a person who has completed high school. If a child who is awarded a scholarship is a senior in high school, then the scholarship is awarded pending the child's graduation.

The act became effective July 1, 2001.

## **E-Procurement/Procurement Card Program**

S.L. 2001-424, Sec. 15.6 (SB 1005, Sec. 15.6). See **Technology**.

## **Aid to Private Colleges**

S.L. 2001-424, Sec. 31.1 (SB 1005, Sec. 31.1) codifies provisions relating to the North Carolina Legislative Tuition Grant program and the State Contractual Scholarship Fund Program in the General Statutes beginning at G.S. 116-21.1. The act also provides that a legislative tuition grant shall be reduced by 25% for any student who has completed 140 semester credit hours or the equivalent of 140 semester credit hours.

This section became effective July 1, 2001. (SK)

## **Teacher Assistant Scholarship Fund**

S.L. 2001-424, Sec. 31.5 (SB 1005, Sec. 31.5) creates the Teacher Assistant Scholarship Fund for the purpose of providing scholarships to teacher assistants who are pursuing college degrees to become teachers. The scholarships are for part-time and full-time course work. The Board of Governors of The University of North Carolina, in consultation with the State Board of Education and State Board of Community Colleges, must develop the scholarship criteria, which must require the applicant to be employed full-time as a North Carolina teacher assistant, enrolled in an accredited bachelors degree in the State, and a State resident. The Board of Governors also may consider minority representation, academic qualifications, and the individual's commitment to the profession of teaching. The three Boards must publicize the availability and criteria for awarding these scholarships. The Board of Governors must adopt rules to implement this Section and must report to the Joint Legislative Education Oversight Committee annually by March 1 on the Fund and its scholarships.

This section became effective July 1, 2001. (RJ)

## **Masters Ed. Administration at A&T State, NCCU, ECSU/Study Possible Dentistry School at ECU and Possible Engineering School at ECU, Western Carolina, and UNC at Asheville**

S.L. 2001-424, Sec. 31.10 (SB 1005, Sec. 31.10) amends G.S. 16-74.21(b) to increase the number of school administrator programs from 9 to 12. The Master of School Administration programs at NC A&T, NC Central, and UNC-Pembroke shall be included in the 12 established programs.

(See also **Studies**).

This section became effective July 1, 2001. (SK)

## **UNC Bd. Of Gov. May Authorize Certain Mgmt. Flex.**

S.L. 2001-424, Sec. 31.11 (SB 1005, Sec. 31.11) authorizes the Board of Governors of The University of North Carolina to grant management flexibility in three areas to any constituent institution that the Board has designated as a special responsibility constituent institution. Once granted management flexibility, the board of trustees of that institution shall, upon recommendation of its chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers, and any person having permanent tenure at that institution. Second, that board of trustees may recommend to the Board of Governors tuition and fees for program-specific and institution-specific needs, without regard to the existence of an emergency situation. Once approved, the institution will keep the tuition and fees. Finally, a grant of management flexibility requires the board of trustees at that institution to establish policies and rules governing the planning, acquisition, implementation, and delivery of information technology and telecommunications at that institution. The initial policies and rules, and subsequent changes to these, must be submitted to the Office of Information Technology Services for its review. This third area of management flexibility does not apply to electronic procurement.

Each board of trustees must report to the Board of Governors and the Joint Legislative Education Oversight Committee on any policies, procedures, and rules adopted under this Section, and any subsequent changes to these, at least 30 days before the next meeting of the Board of Governors. They become effective immediately following that meeting unless otherwise provided by the board of trustees.

The Joint Legislative Education Oversight Committee must study whether this management flexibility should be extended to include personnel, property, and purchasing responsibilities. That Committee must report to the 2003 General Assembly.

This section became effective July 1, 2001. (RJ)

## **Progress Board**

S.L. 2001-424, Sec. 31.12 (SB 1005, Sec. 31.12), as amended by S.L. 2001-513, Sec. 6 (HB 231, Sec. 6) makes various amendments to the Progress Board. Currently, the Board is located at North Carolina State University but this section allows the Board to be located at any of the UNC constituent institutions or at any institution that makes a formal invitation to house the Board. The membership on the Board is increased from 21 to 24. The section also makes various changes in the duties of the Board.

This section became effective July 1, 2001. (SK)

## University System Optional Retirement Plan for Senior Administrators/AG Extension

S.L. 2001-424, Sec. 32.27 (SB 1005, Sec. 32.27). See **Employment**.

## NC School of Science & Math/Budget Flexibility

S.L. 2001-449 (SB 879) extends to the North Carolina School of Science and Mathematics (School) some of the budget flexibility currently held by the Special Responsibility Constituent Institutions (SRCIs) of The University of North Carolina. The act provides the following:

- The School may be designated as a SRCI after the Board of Governors (Board) finds that the School has the management staff and internal fiscal controls to administer the additional management authority and discretion delegated to it.
- The School is subject to the same rules, adopted by the Board, as the other SRCIs to receive and maintain that designation. These rules include procedures for reviewing the required financial audits and procedures for handling any financial problems.
- The management flexibility will give the Director greater flexibility in creating and abolishing positions when that would maintain and advance the School's programs and services.
- The Board must direct the School to assess how this flexibility impacts student learning. The Board will collect this assessment and include it as a part of the annual report to the Joint Legislative Education Oversight Committee on the impact on student learning, fiscal savings, management initiatives, increased efficiency and effectiveness, and other outcomes made possible by the flexibility given to all the SRCIs.
- The Board shall set the School's bid value benchmark, with regard to competitive bidding procedures, at an amount no greater than \$250,000. The benchmark for the School shall be based on available staff resources, reviews of purchasing compliance, and audit results.
- All General Fund appropriations for continuing operations of the School would be made in a single sum to each budget code for each year of the fiscal period.
- This management flexibility will permit the School to expend monies from the General Fund and from the overhead receipts special fund in a manner that the Director calculates would maintain and advance the School's programs and services, consistent with the policies of the board of trustees.
- The School may transfer these funds, including funds for salaries, among line items.
- The quarterly allotment procedure will apply to the General Fund appropriations made for current operations of the School.
- The General Fund monies must be recorded, reported, and audited in the same way as the other SRCIs.
- Unlike the SRCIs, the School will not be allowed to retain reversions.

The act became effective July 1, 2001. (RJ)

## Revise BOG Election Procedure

S.L. 2001-503 (HB 1144) eliminates the racial minority, political minority, and women categories for seats on the UNC Board of Governors so that all future seats on the Board are at-large positions. The act changes the procedure the General Assembly uses to elect the Board members but does not change the number of members or their terms. The act also clarifies that the Board members shall be elected based on their knowledge and skills, and their training and experience to administer the affairs of The University of North Carolina.



The act became effective December 19, 2001 and applies to elections held on or after that date. (SK)

## **Major Pending Legislation**

### **Schools Must Protect Student & Family Privacy**

HB 568 would establish requirements for administering student surveys and for obtaining, handling, and maintaining information related to these surveys. The bill would also direct the State Board of Education to adopt rules and policies to implement the act, and establish a review panel within the Department of Public Instruction to investigate, process, and review alleged violations. The bill has passed the House and is pending in the Senate. (SI)

### **School Volunteer Records are Confidential**

HB 1087 would make school records regarding volunteers, former volunteers and persons applying to be volunteers confidential records and these records would not be open to public inspection under the Public Records Act. The bill has passed the House and is pending in the Senate. (SI)

### **Clarify School Admissions Process**

HB 1125 would clarify the procedure for enrolling a child who is not a domiciliary of a local school administrative unit but is living with a parent, legal custodian, or custodial adult who is domiciled in the local school administrative unit. The bill would also give the adult, with whom the student is residing, the same legal authority, responsibility, and liability as the parent or legal custodian would have. This shall not apply to a child in a pre-adoptive placement. The bill has passed the House and is pending in the Senate. (SI)

### **Legislators Can't Serve on Comm. College Bd.**

SB 304 would prohibit legislators from serving on the boards of trustees of community colleges. The bill has passed the Senate and is pending in the House. (SI)

## **Studies**

### **Legislative Research Commission**

#### **The 2001 Studies Bill**

S.L. 2001-491, Secs. 2.1 (1)(a), 2.1 (10)(b) and 2.1(12)(a) (SB 166, Secs. 2.1 (1)(a), 2.1 (10)(b) and 2.1(12)(a)) authorizes the Legislative Research Commission to study the following education issues:

- Definition of "child" in the Veterans' Scholarship Program.

- Reporting threats of school violence.
- Improving academic performance of juveniles in education programs for juveniles in juvenile facilities, promoting efficiencies in government to permit funds to be redirected to these education programs, and increasing school-based decision making and parental involvement in these education programs.

## **New Independent Studies/Commissions**

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

S.L. 2001-424, Sec. 28.30 (SB 1005, Sec. 28.30) extends the Commission on Improving the Academic Achievement of Minority and At-Risk Students until January 10, 2003. The Commission shall study additional resources needed to close the academic achievement gap and keep it closed.

### **UNC Board of Governors Study Commission**

S.L. 2001-491, Part XXXI (SB 166, Part XXXI) creates the UNC Board of Governors Study Commission. The Commission shall study the method of election or appointment of members of the Board of Governors, the length of members' terms, the number of terms a member may serve, and the size of the Board of Governors. The Commission may examine the governing boards of other states' institutions of higher education. The Commission shall report its findings and any recommendations to the 2003 Regular Session of the General Assembly.

This part became effective December 19, 2001.

## **Referrals to Existing Commissions/Committees**

### **Education Oversight Studies**

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

- The State's Testing Program. S.L. 2001-424, Sec. 28.17(i) (SB 1005, Sec. 28.17(i)).
- State Laws Governing Special Education and Related Services for Children With Disabilities. S.L. 2001-424, Sec. 28.29(b) (SB 1005, Sec. 28.29(b)).
- Salaries of Food Service Workers and Custodians Employed by the Public Schools. S.L. 2001-424, Sec. 28.34 (SB 1005, Sec. 28.34).
- Salary Differentials for Instructional Personnel. S.L. 2001-424, Sec. 28.37(a) (SB 1005, Sec. 28.37(a)).
- Salary Differentials for Instructional Support Personnel. S.L. 2001-424, Sec. 28.37(b) (SB 1005, Sec. 28.37(b)).
- Providing Benefits to Part-time Teachers as a Means to Recruit Certified Teachers Back into the Classroom. S.L. 2001-424, Sec. 29.2(c) (SB 1005, Sec. 29.2(c)).
- Increasing the Size of the Teaching Fellows Program to Improve the Supply of Qualified Teachers for the Public Schools. S.L. 2001-424, Sec. 29.2(d) (SB 1005, Sec. 29.2(d)).
- Discrepancies in Community College Faculty Salaries. S.L. 2001-424, Sec. 30.8 (SB 1005, Sec. 30.8).
- Professional Development Programs for Public School Professionals. S.L. 2001-424, Sec. 31.4(c)-(e) (SB 1005, Sec. 31.4(c)-(e)).

- Management Flexibility for Special Responsibility Constituent Institutions to Include Personnel, Property, and Purchasing Responsibilities. S.L. 2001-424, Sec. 31.11(c) (SB 1005, Sec. 31.11(c)).

The Joint Legislative Education Oversight Committee may study the following issues:

- Residential Charter Schools. S.L. 2001-491, Sec. 8.2 (SB 166, Sec. 8.2).
- Halifax Community College Service Area. S.L. 2001-491, Sec. 8.4 (SB 166, Sec. 8.4).
- Teaching Personal Financial Literacy in Schools. S.L. 2001-491, Sec. 8.5 (SB 166, Sec. 8.5).
- Classroom Experience for School Personnel. S.L. 2001-491, Sec. 8.6 (SB 166, Sec. 8.6).
- Schoolwork of Suspended Students. S.L. 2001-491, Sec. 8.7 (SB 166, Sec. 8.7).
- Nutrition in Public Schools. S.L. 2001-491, Sec. 8.8 (SB 166, Sec. 8.8).
- Tuition Rates for Noncitizen Immigrant Students. S.L. 2001-491, Sec. 8.9 (SB 166, Sec. 8.9).
- Science, Mathematics, and Technology Education. S.L. 2001-491, Sec. 8.10 (SB 166, Sec. 8.10).
- Health Care Personnel Education. S.L. 2001-491, Sec. 8.11 (SB 166, Sec. 8.11).
- Community Colleges (Nine-month contracts of full-time faculties, the relationship between summer term instruction and faculty/staff salaries, and additional student services positions). S.L. 2001-491, Sec. 8.12 (SB 166, Sec. 8.12).
- Prescription of Ritalin and Other Drugs to Children Diagnosed ADD/ADHD. S.L. 2001-491, Sec. 8.13 (SB 166, Sec. 8.13).
- Review of Low-Wealth School Funding Formula. S.L. 2001-491, Sec. 8.14 (SB 166, Sec. 8.14).
- Meeting the Needs of Students with Disabilities. S.L. 2001-491, Sec. 8.15 (SB 166, Sec. 8.15).
- High Priority School Assistance. S.L. 2001-491, Sec. 8.16 (SB 166, Sec. 8.16).
- Performance-Based Licensure Program. S.L. 2001-491, Sec. 8.17 (SB 166, Sec. 8.17).
- Advisory State Board of Education Members. S.L. 2001-491, Sec. 8.18 (SB 166, Sec. 8.18).
- Speech and Language Pathology Caseloads and Severity Rating Scales. S.L. 2001-491, Sec. 8.19 (SB 166, Sec. 8.19).
- Participation of Nonpublic Students in Public School Extracurricular Activities. S.L. 2001-491, Sec. 8.20 (SB 166, Sec. 8.20).
- Higher Education Residency Requirements. S.L. 2001-491, Sec. 8.21 (SB 166, Sec. 8.21).

## **Referrals to Departments, Agencies, Etc.**

### **State Board of Education**

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

- Benefits of Providing Parents or Guardians with Copies of Tests Administered Under the Statewide Testing Program. S.L. 2001-424, Sec. 28.17(d) (SB 1005, Sec. 28.17(d)).
- Support for Initially Certified Teachers. S.L. 2001-424, Sec. 28.19(a) (SB 1005, Sec. 28.19(a)).

### **Community Colleges**

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

- Transfer of the Global Transpark Education and Training Center. S.L. 2001-424, Sec. 27.20 (SB 1005, Sec. 27.20).
- Delivery of Human Resources Development Services. S.L. 2001-424, Sec. 30.3 (SB 1005, Sec. 30.3).

## **Forsyth Technical Community College**

S.L. 2001-59 (SB 650) is a local act that directs the Forsyth Technical Community College to study the feasibility of establishing a satellite campus in Stokes County. The study shall take into consideration the 10 criteria set out in State Board policy regarding the establishment and maintenance of a satellite campus. The study shall be completed by October 15, 2001.

The act became effective May 10, 2001. (SK)

## **UNC Board of Governors**

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

- Measures Used to Make Admissions, Placement, and Advanced Placement Decisions About Incoming Freshmen. S.L. 2001-312 (HB 1246).
- Establishment of a School of Pharmacy at Elizabeth City State University. S.L. 2001-424, Sec. 31.10(c) (SB 1005, Sec. 31.10(c)).
- Establishment of a School of Dentistry and a School of Engineering at East Carolina University. S.L. 2001-424, Sec. 31.10(d) (SB 1005, Sec. 31.10(d)).
- Establishment of a School of Engineering at UNC-Asheville and Western Carolina University. S.L. 2001-424, Sec. 31.10(d) (SB 1005, Sec. 31.10(d)).
- Feasibility of building a new stadium at Fayetteville State University. S.L. 2001-491, Sec. 24.1 (SB 166, Sec. 24).

## Chapter 10 Employment

Karen Cochrane-Brown (KCB) Bill Gilkeson (BG), Theresa Matula (TM) and others (See references by initials on page 269 of this publication.)

### Enacted Legislation

## General Employment

### ESC Records/Evidence – AB

S.L. 2001-115 (HB 342) clarifies that the Employment Security Commission (ESC) may photocopy or otherwise reproduce all ESC records or filings required to be made with the ESC and that these copies or reproductions, if certified, are admissible as evidence in all proceedings without exception. This act also provides that, notwithstanding general rules on the destruction of public records, the ESC may destroy or dispose of original records at the direction of the Chairman of the ESC when a copy or reproduction has been made or when three years have passed.

The section of this act that deals with the admissibility of copies or reproductions of ESC records became effective December 1, 2001, and applies to actions and proceedings pending on or after that date. The section that deals with the destruction or disposal of records became effective May 24, 2001. (WGR)

### Poll Worker Discharge

S.L. 2001-169 (SB 716). See **Constitution and Elections**.

### Indian Tribe Unemployment Option-AB

S.L. 2001-184 (HB 311) amends Chapter 96, Article 2, Unemployment Insurance Division, to allow a federally recognized Indian tribe to make an election as to whether to finance benefits paid to employees on a reimbursement basis or an experience rating program basis for purposes of the Unemployment Insurance Fund. The election is binding for a period of three years.

The act became effective June 7, 2001. (TM)

### Workers Comp. For Pickup Firefighters-AB

S.L. 2001-204 (SB 299). See **Insurance**.

### Domestic Employer Wage Reports – AB

S.L. 2001-207 (HB 344) explicitly provides that only employers of domestic service employees may file wage reports annually provided that their quarterly contribution is less than \$5.00. The bill also removes the \$5.00 "floor" for penalties on past-due contributions and filings, which is applicable to all employers, not just domestic service worker employers.

Prior to the enactment of this bill, G.S. 96-9(a)(8) provided that **any** employer who has filed wage reports for three consecutive years and who has not been liable for quarterly contributions during the preceding calendar year may receive permission from the Chair of the Employment Security Commission to file wage reports annually. Federal law, however, explicitly provides that only employers of domestic service employees that meet the above requirements may file wage reports annually. The North Carolina Employment Security Commission requested this bill to conform North Carolina law to federal law.

The sections of the bill removing the \$5.00 floor for penalties became effective June 15, 2001 and apply to penalties assessed for reports and contributions due for quarters beginning on or after April 1, 2001. The remainder of the act became effective June 15, 2001. (DJ, TG)

## **Restore Workers' Comp Stability**

S.L. 2001-216 (HB 1045). See **Insurance**.

## **Workers Compensation Amendments**

S.L. 2001-232 (SB 466). See **Insurance**.

## **Workers Comp. Cancellations and Renewals**

S.L. 2001-241 (SB 468). See **Insurance**.

## **Remove Employment Security Sunsets**

S.L. 2001-251 (HB 343) removes two sunset provisions relating to the employment security laws and makes other amendments to the employment security laws.

First, the act removes the September 1, 2001 sunset on the alternate base period, originally established in 1997. The base period refers to the period of employment used in calculating whether a claimant for unemployment insurance benefits qualifies for benefits. The traditional base period for unemployment insurance claims is the first four of the last five calendar quarters. The alternate base period allows traditionally ineligible claimants to qualify for benefits if they have wages in the four most recently completed calendar quarters.

The act also removes the June 30, 2001 sunset on the shift restriction provision, originally established in 1999. This provision allows a worker to qualify for benefits if the worker is forced to change shifts or quit work and cannot work the newly assigned shift because of undue family hardship. The act also expands the bases for qualifying a worker for this provision by broadening the definition of "undue family hardship" that applies to this provision. Prior to this enactment, "undue family hardship" was an inability, during the assigned shift, to obtain childcare for a minor child under the age of 14, or elder care for an aged or disabled parent. Under the expanded definition, "undue family hardship" is an inability, during the assigned shift to obtain childcare for any minor child in the individual's legal custody or to obtain care for any disabled member of that individual's immediate family.

This act also makes the 100-day "noncharge" applicable to all employees, not just Work First applicants and employees referred from the Employment Security Commission. The "noncharge" rule provides that if an employee is hired and must be separated from employment within the first 100 days of employment due to inability to do the work, the employer is not charged for any benefits.

The sections of the act expanding the bases for qualifying for the restricted shift provisions became effective September 1, 2001 and applies to claims filed on or after that date. The remainder of the act became effective June 29, 2001. (FF)

## **Soil and Water Employee Judgments**

S.L. 2001-300 (HB 968). See **Local Government**.

## **Hospital Temporary Bed Increases**

S.L. 2001-410 (HB 1147). See **Health and Human Services**.

## **Workers Comp. Awards Filed as Judgments**

S.L. 2001-477 (SB 881). See **Insurance**.

# **Governmental Employment**

## **Amend Public Health Authorities Act**

S.L. 2001-92 (SB 221). See **Health and Human Services**.

## **State Health Plan Contract/Exempt APA**

S.L. 2001-192 (SB 825) exempts disputes between the Teachers' and State Employees' Comprehensive Major Medical Plan ("the Plan") and entities under contract with the Plan from the contested case provisions of the Administrative Procedure Act. Contract disputes between the Plan and any entity contracting with the Plan will be litigated in State court and will not go through an administrative hearing first. The bill also clarifies that a State agency may seek relief under the Declaratory Judgment Act (Article 26, Chapter 1 of the General Statutes).

The act became effective June 12, 2001 and applies to cases pending on that date. (DJ)

## **Teachers' and State Employees' Benefits (State Health Plan)**

S.L. 2001-253 (SB 824), as amended by S.L. 2001-322 (SB 34), S.L. 2001-395 (SB 61), and S.L. 2001-513, Sec. 22 (HB 231, Sec. 22) makes benefits changes to the Teachers' and State Employees' Comprehensive Major Medical Plan (the "State Health Plan"). Those changes are as follows:

- The deductible increased from \$250/person to \$350/person and from \$750/aggregate to \$1,050/aggregate. Effective July 1, 2002, the Executive Administrator and Board of Trustees may increase annually the amount of the annual deductible and annual aggregate deductible by not more than the percentage increase in the U.S. Consumer Price Index (CPI) for All Urban Consumers for Medical Care.
- Second surgical opinions are no longer required.
- The copay for generic prescriptions remains at \$10, but the copay for branded prescriptions increased from \$15 to \$25, the copay for branded prescriptions with a generic equivalent drug increased from \$20 to \$35, and the copay for each branded or generic prescription not on a formulary used by the Plan increased from \$25 to \$40. Coverage for growth hormone and weight loss drugs and antifungal drugs for the treatment of nail fungus and botulinum toxin is now subject to the prior approval of the

pharmacy benefit manager. Any formulary used by the State Health Plan will be an open formulary, and Plan members will be assessed no more than \$2,500 per person per fiscal year in prescription drug copayments.

- The annual maximum out-of-pocket for the 20% coinsurance for an individual increased from \$1,000 to \$1,500 with an annual maximum of \$4,500 per employee and child(ren) or employee and family coverage.
- Speech and occupational therapies are now specifically covered in-hospital.
- Coverage for benefits in a skilled nursing facility is now set at not more than 100 days per fiscal year for each medical condition, and coverage without prior authorization for skilled nursing facility care for the initial 30 days after hospitalization has been eliminated.
- Coverage for therapeutic shoes for diabetes and other high-risk conditions has been added, subject to a \$350 limit.
- Coverage for cardiac rehabilitation charges increased from \$650 to the lesser of \$1,800 or charges for 90 days within 6 months of specified qualifying events.
- Prior medical approvals are now required for varicose vein surgery, botulinum toxin, and outpatient drugs for growth hormone, weight loss, and antifungal drugs for the treatment of nail fungus.
- The hospital inpatient copayment increased from \$75 to \$100, a \$50 copayment for hospital outpatient and ambulatory surgical facility services with allowable charges exceeding \$500 has been added, the hospital emergency room copayment increased from \$50 to \$100, the physician office visit copayment increased from \$10 to \$15, a copayment of \$15 for visits to other professional providers of health care services has been added, and a \$15,000 annual limit on coinsurance for out-of-pocket expenses for use of non-network providers has been added. (S.L. 2001-513, Sec. 22 (HB 231, Sec. 22) amended these changes by providing that the \$15 copayment will not apply to home intravenous therapy sessions or to injected medications, nor will it apply to cardiac rehabilitation benefits.)
- The maximum lifetime benefit increased from \$2 million to \$5 million.
- As of January 1, 2002, the State Health Plan must comply with the prompt payment to provider statute.
- The State Health Plan is now required to give notice and an opportunity to comment 30 days prior to adopting, amending, or rescinding a rule or regulation, unless immediate adoption without notice is necessary in order to fully effectuate the purpose of the rule or regulation. The notice must be provided to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-39.3, all relevant health care providers affected by a rule or regulation, and to any other persons requesting a written description and approved by the Executive Administrator and Board of Trustees.
- The State Health Plan must develop a prospective payment system for the payment of hospital outpatient services and the services of ambulatory surgical facilities and a medical fee schedule for the payment of professional health care services.

The bill also made a change to the provision of the Workers Compensation Act concerning reimbursement for medical compensation by setting reimbursement rates for hospital treatment and services provided under the Workers Compensation Act on or after July 1, 2001 and before August 1, 2001 at the June 30, 2001 level. (The August 1, 2001 date was subsequently changed to September 1, 2001 in S.L. 2001-322 and to September 15, 2001 in S.L. 2001-395).

Except as specifically provided otherwise, the act became effective July 1, 2001. (DJ)



## **Exemptions for Interns**

S.L. 2001-285 (HB 334) amends G.S. 96-8(5)p in the Unemployment Insurance Division Article of the Employment Security Laws, to exempt governmental employers who hire interns from the definition of employer.

The act became effective July 13, 2001. (TM)

## **Abolish Office of State Personnel PREPARE Program**

S.L. 2001-424, Part XIII (SB 1005, Part XIII) abolishes the PREPARE Program which was a pre-retirement planning program with components for younger employees vested in the Retirement System, and for those employees near retirement. The Department of State Treasurer was encouraged to include the model in its retirement services.

The act became effective July 1, 2001. (TM)

## **Modifications to the State Employee Incentive Bonus Program**

S.L. 2001-424, Sec. 7.2(a)–(h). (SB 1005, Sec. 7.2(a)–(h)) amends G.S. 143-340(1) to require the Secretary of Administration to serve as an ex officio on all program committees for the State Employee Incentive Bonus Program (SEIBP) and to designate an executive secretary to administer the program. This section also amends the definitions, the savings determination method, and the allocation of incentive bonus funds outlined for the SEIBP in Article 36A of Chapter 143.

This section became effective July 1, 2001 and applies to State employee suggestions and innovations approved or awarded on or after that date. (TM)

## **State Employee Federal Remedy Restoration Act**

S.L. 2001-467 (HB 898) amends Chapter 143 by adding Article 31D entitled "State Employee Federal Remedy Restoration Act." G.S. 143-300.35 waives the State's sovereign immunity for the limited purpose of allowing State employees to bring lawsuits in State and federal courts and obtain and satisfy judgments against the State or any of its departments, institutions, or agencies. The Acts specifically covered under this article are as follows: The Fair Labor Standards Act, 29 U.S.C. § 201, et seq.; The Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.; The Family and Medical Leave Act, 29 U.S.C. § 2601, et seq.; and The Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. The amount of monetary relief a State employee receives shall not exceed the amounts authorized under G.S. 143-299.2 or the amounts authorized under the applicable federal law whichever is less. G.S. 126-34.1(a) is amended to specify that violation of the aforementioned federal statutes is grounds for filing a contested case.

This act is not applicable to State employees in exempt policy-making positions pursuant to G.S. 126-5(d).

The act became effective October 1, 2001 and applies to causes of action arising on or after that date. (TM)

## **Military Leave**

S.L. 2001-513, Sec. 23 (HB 231, Sec. 23) amends the title of Article 9 in Chapter 127A to specifically include "Reserve Components of the United States Armed Forces." G.S. 127A-116, regarding the promulgation of policy and regulations related to leaves of absence for State officers and employees, is amended to specifically include federal military duty and special emergency management service.

This section became effective September 1, 2001. (TM)

## **Governmental Employment – Retirement**

### **Temporary Employees of the General Assembly**

S.L. 2001-424, Sec. 32.21A (SB 1005 Sec. 32.21A) amends G.S. 120-32(1) to specify that compensation earned by retirees while in temporary status as employees of the General Assembly is exempt from the reemployment earnings provisions of G.S. 135-3(8)c.

This section became effective January 1, 2001. (TM)

### **Provide Cost-Of-Living Increases for Retirees of the Teachers' and State Employees' Retirement System, the Judicial Retirement System, and the Legislative Retirement System**

S.L. 2001-424, Sec. 32.22 (SB 1005, Sec. 32.22) provides a 2% increase in the allowances for beneficiaries of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System and the Local Governmental Employees' Retirement System who retired on and before July 1, 2000. The increase for beneficiaries who retired after July 1, 2000, but before June 30, 2001 is prorated accordingly.

This section also provides a 2% increase in the allowances for beneficiaries of the Legislative Retirement System who retired on and before January 1, 2001. The increase for beneficiaries who retired after January 1, 2001, but before June 30, 2001 is prorated accordingly.

This section became effective July 1, 2001. (TM)

### **Increase Local Retirement Benefits**

S.L. 2001-424, Sec. 32.23 (SB 1005, Sec. 32.23) increases the defined benefit accrual rate for members of the Local Governmental Employees' Retirement System from 1.78% to 1.81% of the member's average final compensation. This provision applies to members who retire on or after July 1, 2001. These members will receive a benefit equal to 1.81% of average final compensation times the member's years of creditable service. The provision also conforms the survivor's alternate benefit so that it will also be computed using the new formula. The provision authorizes an increase of 1.7% of their current allowance to persons who were retired as of June 1, 2001.

This section became effective July 1, 2001. (KCB)

### **Optional Retirement Program for the North Carolina Community Colleges System**

S.L. 2001-424, Sec. 32.24 (SB 1005, Sec. 32.24) establishes an Optional Retirement Program to be implemented by the North Carolina Community Colleges System, for the benefit of the presidents of the community colleges, who are appointed after January 1, 2002, and who elect membership. Those eligible members who fail to elect to participate in the Optional Retirement Program will automatically become members of the Teachers' and State Employees' Retirement System.

This section became effective January 1, 2003. (KCB)

## **Shorten the Amount of Time Retired Teachers Must be Retired Before They Return to Work**

S.L. 2001-424, Sec. 32.25 (SB 1005, Sec. 32.25) amends the reemployment provisions in G.S. 135-3(8)c to shorten the period of time from 12 months to six months that a beneficiary of the Teachers' and State Employees' Retirement System must be retired prior to reemployment in a public school. (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.) During the six months, the beneficiary may be employed as a substitute teacher or a part-time tutor.

This section became effective July 1, 2001 and expires June 30, 2003. (TM)

## **University System Optional Retirement Plan For Senior Administrators/AG Extension**

S.L. 2001-424, Sec. 32.27 (SB 1005, Sec. 32.27) expands the number of positions eligible for membership in the Optional Retirement Program to include (1) employees of the University appointed by the Board of Governors on the recommendation of the President or by the Chancellor of a constituent institution; and (2) field faculty of the Cooperative Agriculture Extension Service, and tenure track faculty in North Carolina State University agriculture research programs who are exempt from the State Personnel Act and who are eligible for membership in the Teachers' and State Employees' Retirement System.

This section became effective July 1, 2001. (KCB)

## **Remove Sick Leave Cap (TSERS)**

S.L. 2001-424, Sec. 32.28 (SB 1005, Sec. 32.28) amends G.S. 135-4(e) to remove the cap on the number of sick leave days that can be used for credit upon retirement for members of the Teachers' and State Employees' Retirement System (TSERS).

The section became effective July 1, 2001 and applies to persons retiring on or after that date. (TM)

## **Sick Leave/Judicial Retirement**

S.L. 2001-424, Sec. 32.29 (SB 1005, Sec. 32.29) amends the law governing the Consolidated Judicial Retirement System to allow creditable service transferred from the Teachers' and State Employees' Retirement System to include any sick leave the member might have accumulated while serving as a State employee. Just as in the State System, one month of service would be allowed for each 20 days or portion thereof of sick leave standing to the member's credit.

This section became effective on July 1, 2001, and applies to members who retire on or after that date. (KCB)

## **Amend Membership Requirements**

S.L. 2001-424, Sec. 32.30 (SB 1005, Sec. 32.30) amends the law governing the Legislative Retirement System to allow a member of the General Assembly to become a contributing member regardless of whether they are contributing to the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, or the Consolidated Judicial Retirement System. This act also permits a retired member to receive a service or disability

retirement allowance regardless of whether they are currently contributing to one of the other public retirement systems.

The act became effective September 26, 2001. (KCB)

## **Dues Deduction for Retirees (LGERS)**

S.L. 2001-424, Sec. 32.31 (SB 1005, Sec. 32.31) adds a new section to Article 3 of Chapter 128 covering the North Carolina Local Governmental Employees' Retirement System (LGERS) to allow any member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of employers as defined in G.S. 128-21(11), to authorize, in writing, the periodic deduction from the member's retirement benefits a designated lump sum to be paid to the employees' or retirees' association.

The act became effective July 1, 2001. (TM)

## **Allow The Purchase of Withdrawal Service in the Teachers' and State Employees' Retirement System**

S.L. 2001-424, Sec. 32.32 (SB 1005, Sec. 32.32) amends statutory provisions to specify that participants in the Teachers' and State Employees' Retirement System, including law enforcement officers who transferred from the Law Enforcement Officers' Retirement System to this Retirement System, who withdrew contributions in accordance with specific provisions and who subsequently returned to service may, upon completion of five years of membership service (previously 10 years), repay in a total lump sum any and all of the accumulated contributions previously withdrawn with interest compounded annually at the rate of six and one-half percent (6.5%) for each calendar year from the year of withdrawal to the year of repayment plus a fee to cover expense of handling which shall be determined by the Board of Trustees, and receive credit for the service forfeited at time of withdrawal.

These provisions shall apply equally to retired members who had attained five years of membership service prior to retirement. The retirement benefit shall be increased the month following the receipt of payment. The retirement benefit shall not include any benefit as a result of retirement adjustments or cost-of-living increases granted since the date of retirement. The retirement benefit will be calculated based in the accrual rate at the time of purchase.

This section became effective July 1, 2001. (TM)

## **Amend Retirement Definitions – VISA Holders Offered Retirement Benefits**

S.L. 2001-426 (HB 1324) amends the definitions of the terms "Employee" and "Teacher" in the Teachers' and State Employees' Retirement System, and the term "Employee" in the Local Governmental Employees' Retirement System to include nonimmigrant aliens who are employed by a participating employer on or after August 1, 2001, if the person otherwise meets the definition of an employee or a teacher. Currently nonimmigrant aliens and persons who hold temporary or time-limited visas are not considered eligible for membership in the Retirement Systems because their employment is deemed temporary. Recent United States Department of Labor regulations require that certain visa holders be offered eligibility for retirement benefits on the same basis as United States citizens. This act complies with the recent federal regulation and allows nonimmigrant aliens to become members of the Retirement System if they are employed in a permanent full-time position on the same basis as United States citizens.

The act became effective August 1, 2001. (KCB)

## **Discontinued Membership Service (LGERS)**

S.L. 2001-435 (HB 943) amends the law governing the Local Governmental Employees' Retirement System to authorize members of the system who are involuntarily terminated from employment to receive a discontinued membership service allowance. The termination must be the result of a "termination event", such as the employer ceasing operation, dissolving, merging with or being acquired by a nonparticipating employer, or the result of a reduction in force. The terminated member's employer must also approve the service allowance and must pay the actuarial present value of the additional liabilities imposed on the Retirement System plus an administrative fee.

The act became effective October 12, 2001. (KCB)

## **Local Flexibility Regarding Charter School Teachers**

S.L. 2001-462 (SB 139). See **Education**.

## **Remove Sick Leave Cap (LGERS)**

S.L. 2001-487, Sec. 82 (HB 338, Sec. 82) amends G.S. 128-26(e) to remove the cap on the number of sick leave days that can be used for credit upon retirement for members of the Local Governmental Employees' Retirement System (LGERS).

This section became effective January 1, 2002. (TM)

## **Retirement Payment (TSERS)**

S.L. 2001-513, Sec. 21 (HB 231, Sec. 21) states the intent of the General Assembly to appropriate funds, with interest at rates consistent with performance and earnings, to the Teachers' and State Employee's Retirement System (TSERS) in recognition of the contributions that would have been made for the fiscal period beginning February 28, 2001 and ending June 30, 2001. The intent is to make these payments by appropriations over a five-year period beginning July 1, 2003.

The act became effective July 1, 2001. (TM)

## **Firemen's and Rescue Squad Workers' Pension Fund**

### **Firemen Reporting**

S.L. 2001-222 (SB 801) amends the law governing the Firemen's and Rescue Squad Workers' Pension Fund relating the reporting of eligible firemen. Under current law, each fire department is required to determine and report the names of eligible firemen to its governing body on an annual basis. The governing body must then determine the accuracy and validity of the qualifications and certify the list to the Board of Trustees of the Pension Fund. This act changes the law to require that the list be certified to the North Carolina State Firemen's Association and directs the Association to provide a list of those meeting the eligibility requirements to the State Treasurer by July 1 of each year. The Department of State Treasurer administers the Firemen's and Rescue Squad Workers' Pension Fund.

The act became effective January 1, 2002. (KCB)

## Major Pending Legislation

### **State Self-Funded Health Care Plan**

SB 822, 2<sup>nd</sup> Edition, would make the following changes to the Teachers' and State Employees' Comprehensive Major Medical Plan:

- Allow the Executive Administrator and Board of Trustees to offer HMO alternatives to members of the Plan, including one or more HMOs underwritten by the State;
- Allow the Executive Administrator to conduct a pilot program to measure the potential cost savings and patient care improvements from medical management of local providers; {HB 338, Sec. 85.5 enacted a similar but not identical version of this language.}
- Transfer a long-term benefit program from the Plan to the Department of State Treasure;
- Make the terms of any contract, including reimbursement rate, between the Plan and hospitals, hospital authorities, physicians, a pharmacy benefit manager, or any other provider of medical services under the Plan confidential and not a public record under State law; [S.L. 2001-516, Sec. 4 (HB 1284, Sec. 4) enacted a similar, but not identical version of this language.]
- Clarifies that the Plan's allowable charges for private duty nursing services are at the lesser of the Plan's usual, customary, and reasonable allowances or 90% of the daily semi-private rate at skilled nursing facilities [This clarification was enacted in HB 338, Sec. 86(b)].
- Provide for direct reimbursement of services to clinical pharmacist practitioners;
- Permits employees, certain retired employees, and their spouses and dependent children to choose reduced coverage under the Plan's self-insured indemnity program in order to get lower monthly premiums;
- Reinstates coverage of prescription drugs to treat erectile dysfunction;
- Requires employees who have had 12 months of non-contributory coverage following an elimination of a job because of a reduction in funds to elect contributory coverage within 90 days after the last day of non-contributory coverage [This provision was enacted in HB 338, Sec. 86(a)].

The bill would also amend the North Carolina insurance laws to allow for the competitive selection of supplemental retirement insurance products for retired State employees.

The bill is currently pending in the House Appropriations Committee. (LA)

## Studies

### **Legislative Research Commission**

#### **Restructuring the Office of State Personnel**

S.L. 2001-491, Sec. 2.1 (1) b. (SB 166, Sec. 2.1 (1) b) states that the Legislative Research Commission may study Restructuring the Office of State Personnel.

The act became effective December 19, 2001. (TM)

## **Early Retirement for State Employees and Law Enforcement Officers**

S.L. 2001-491, Sec. 2.1 (1)e. (SB 166, Sec. 2.1 (1)e) authorizes the Legislative Research Commission to study early retirement for State employees and law enforcement officers.  
The act became effective December 19, 2001. (TM)

## **Firefighter's and Rescue Squad Retirement Issues**

S.L. 2001-491, Sec. 2.1 (1)e. (SB 166, Sec. 2.1 (1)e) authorizes the Legislative Research Commission to study firefighter's and rescue squad retirement issues.  
The act became effective December 19, 2001. (TM)

## **State's Overall System of Personnel Administration**

S.L. 2001-491, Sec. 2.1E (SB 166, Sec. 2.1E) authorizes the Legislative Research Commission to study the State's overall system of personnel administration including the following:

- The funding and staffing of the Office of State Personnel.
- The Comprehensive Compensation System for State employees.
- State employee performance evaluation practices and procedures.
- Whether provisions of the State Personnel Act, Chapter 126 of the General Statutes, should be revised based upon modern human resources practices.
- Any other matters relative to the policies, practices, terms, and condition of State government employment.

The act became effective December 19, 2001. (TM)

## **Optional Retirement Program Study Commission**

S.L. 2001-424, Sec. 32.24A (SB 1005, Sec. 32.24A) creates the Optional Retirement Program Study Commission to examine the feasibility and desirability of (1) expanding eligibility under the Optional Retirement Program to include all University System employees who are exempt from the State Personnel Act; and (2) establishing an optional retirement program for employees of the North Carolina Community College System; and (3) directing the Study Commission to report the results of its study and its recommendations to the 2002 Session of the General Assembly.

This section became effective July 1, 2001. (KCB)

## **Referrals to Departments, Agencies, Etc.**

### **Retirement System Actuary**

S.L. 2001-424, Sec. 32.26 (SB 1005, Sec. 32.26) requires the State Treasurer to report to the General Assembly no later than January 31, 2002 on the effectiveness and efficiency of actuarial services for specified plans/funds and whether future selection should be made after a competitive bid process.

The act became effective July 1, 2001. (TM)

Chapter 11  
Environment and  
Natural Resources

Tim Dodge (TD), George Givens (GG),  
Jeff Hudson (JH), Rick Zechini (RZ)  
and others (See references by  
initials on page 269 of this publication.)

**Enacted Legislation**

**Air Quality**

**Air Quality/Motor Vehicle Inspection Fees**

S.L. 2001-504 (HB 969) modifies the motor vehicle inspections and maintenance program.

**Background.** During the past three sessions the General Assembly has enacted legislation designed to better protect the air quality of the State. The Ambient Air Quality Act of 1999 (S.L. 1999-328) contained a number of air quality provisions, including the expansion of the motor vehicle inspections and maintenance (I/M) program from nine to 48 counties. S.L. 2000-134 further modified the I/M program by authorizing the use of on-board diagnostic (OBD) systems in place of other testing requirements. The schedule for OBD implementation and emissions inspection expansion is set out in the following table:

**OBD Implementation and Emissions Inspection Expansion Schedule**

July 1, 2002	Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, Wake (counties where emissions tests are currently required)
July 1, 2003	Catawba, Cumberland, Davidson, Iredell, Johnston, Rowan
January 1, 2004	Alamance, Chatham, Franklin, Lee, Lincoln, Moore, Randolph, Stanly
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

S.L. 2000-134 also directed the Environmental Review Commission (ERC) to recommend legislation to increase the inspection fees to the 2001 General Assembly.

S.L. 2001-504 (HB 969) makes the following modifications to the I/M program:

**Increases Fees.** An inspection fee consists of two portions: (1) a station fee, which is paid to the station performing the inspection, and (2) a sticker fee, which is allocated among various funds and the State agencies charged with administering the program. The act establishes a maximum station fee that may be charged for an emissions inspection, rather than a flat amount.



This modification allows stations to charge any amount up to the maximum allowed for the station portion of the fee. The following tables set out the fee changes for the safety inspection program and the emissions inspection program.

**Safety-Only Inspection Fee Schedule**

<b>SAFETY-ONLY INSPECTION FEE:</b>	<b>Previous</b>		<b>1-Jan-03</b>
Station Fee	\$8.25	\$8.25	\$8.25
Total Sticker Fee	\$1.00	\$1.05	\$0.85
- Highway fund	\$0.75	\$0.75	\$0.55
- Volunteer Rescue / EMS Fund	\$0.15	\$0.18	\$0.18
- Rescue Squad Worker's Relief Fund	\$0.10	\$0.12	\$0.12
<b>Total Safety-Only Inspection Fee</b>	<b>\$9.25</b>	<b>\$9.30</b>	<b>\$9.10</b>

**Emissions Inspection Fee Schedule**

<b>EMISSIONS INSPECTION FEE:</b>	<b>Previous</b>	<b>1-Jan-02</b>	<b>1-Jan-03</b>	<b>1-Jul-07</b>
Station Fee	\$17.00	\$23.50 Max	\$23.50 Max	\$23.75 Max
Total Sticker Fee	\$2.40	\$6.50	\$6.50	\$6.25
- Highway fund	\$0.00	\$0.00	\$0.55	\$0.55
- DMV Emissions Program	\$1.80	\$3.80	\$3.00	\$3.00
- Division of Air Quality	\$0.35	\$0.65	\$0.65	\$0.65
- Volunteer Rescue / EMS Fund	\$0.15	\$0.18	\$0.18	\$0.18
- Rescue Squad Worker's Relief Fund	\$0.10	\$0.12	\$0.12	\$0.12
- Telecommunications Account	\$0.00	\$1.75	\$1.75	\$1.75
- Highway Trust Fund Repayment Fee	\$0.00	\$0.00	\$0.25	\$0.00
<b>Total Emissions Inspection Fee</b>	<b>\$19.40</b>	<b>\$30.00 Max</b>	<b>\$30.00 Max</b>	<b>\$30.00 Max</b>

**Creates Telecommunications Account and Highway Trust Fund Repayment Fee.**

The act creates the Telecommunications Account as a nonreverting account within the Highway Fund. A portion of the increase in the sticker fee is dedicated to covering telecommunications costs and providing the equipment necessary to perform OBD emissions inspections to current stations and to all inspection stations in the expansion counties. The act also authorizes the Department of Transportation to transfer up to \$2,700,000 from the Highway Trust Fund to the Division of Motor Vehicles (DMV) to pay for telecommunications costs associated with the registration denial portion of the I/M program that accrued during the 2001 calendar year. These funds will be repaid to the Highway Fund over the next five years through the Highway Trust Fund Repayment Fee.

**Requires Signage and Fee Information on Receipt.** The act directs DMV to develop signage for display in inspection stations that provides information on the I/M program and the distribution of the inspection fee. The fee information will also be shown graphically on the inspection receipt.

**Exempts Older Vehicles and Clarifies Testing Requirements.** Previously, 1975 and older model motor vehicles were exempted from emissions inspection requirements. The act exempts a motor vehicle more than 25 model years old and makes clarifying changes to standardize the rolling exemption.

**Waiver for Safety Inspection.** Under current law, a vehicle that fails an *emissions* inspection may be issued a waiver from the inspection requirement provided that it meets certain

requirements. The act creates an exemption for vehicles that fail a *safety* inspection because of missing emissions control devices. In order to qualify for the waiver, documented repairs must have been made to the vehicle to correct the cause of the failure during the previous calendar year. The minimum outlay to qualify for the waiver is \$75.00 if the vehicle is a pre-1981 model and \$200.00 if the vehicle is a 1981 or newer model.

**Exempts Motor Homes.** The act exempts motor homes or house cars from emissions inspection requirements, provided that the vehicle: (i) is not part of a fleet; (ii) is built on a single chassis; (iii) has a gross vehicle weight of more than 10,000 pounds; and (iv) is designed primarily for recreational use.

**Requires Inspection of Transferred Vehicles.** The act requires that a vehicle whose registration is transferred from a non-emissions county to an emissions county must pass an emissions inspection within 60 days of transfer of the registration.

**Establishes and Amends Violations and Penalty Schedules for Inspection Programs.** The act establishes a schedule of punitive actions for stations and inspectors who violate the safety inspection requirements similar to those that apply to violations of emissions inspection requirements.

**Field Tests of OBD Inspection Method.** The act authorizes DMV and the Division of Air Quality, prior to the implementation of the OBD inspection method, to perform field tests of the equipment, computer software, and procedures used in connection with the OBD inspection method. Inspection stations would participate in the field trials on a voluntary basis. The field tests may be conducted during the six-month period immediately prior to the implementation of the OBD-based emissions testing in any county.

**Development of Rules.** The act authorizes the Environmental Management Commission (EMC) and DMV to adopt temporary rules to implement the provisions of the act. This authority became effective when the act became law on December 19, 2001, and continues in effect until all rules necessary to implement the act are effective as either temporary or permanent rules.

**Study Ways to Reduce I/M Program Fees.** The act directs the Environmental Review Commission (ERC) to review the I/M program to determine ways in which the cost of the program to vehicle owners could be reduced, including the option of requiring biennial inspections rather than annual inspections. The ERC is directed to report its findings to the 2003 General Assembly.

**Study Motor Vehicle Safety Inspection Program.** The act directs the Joint Legislative Transportation Oversight Committee to evaluate the effectiveness of the safety inspection program and to evaluate the potential impacts of eliminating the program. The Committee is directed to report its final findings to the 2003 General Assembly.

The act became effective January 1, 2002, and, unless otherwise stated, the sections of the act became effective on that date. (GG, TD)

## Coastal Development

### Temporary Rules/Coastal Resources & Env. Mgt.

S.L. 2001-418 (HB 189) provides for the following modifications to administrative rules adopted by the Coastal Resources Commission (CRC) and the Environmental Management Commission (EMC):

**Coastal Buffers:** On August 1, 2000, the permanent rule adopted by the CRC establishing a 30-foot buffer requirement on coastal shorelines (15A NCAC 07H .0209(e)) became effective. Coastal shorelines include the non-ocean shorelines found along estuaries, sounds, and bays. Under the buffer rule, only structures with water-dependent uses could be built in the buffer zone. These include docks, boat ramps, bulkheads on eroding shorelines, and walkways to the water. Under the rule, a property owner can also build a single-family house that encroaches into the buffer zone if the

lot is too small to accommodate the buffer, as long as the land was platted prior to June 1, 1999. The house must comply with the buffer to the maximum extent feasible.

In November 2000, the CRC adopted a temporary rule allowing the construction of a house within the buffer on small undeveloped lots. The exception applies to lots that meet each of the following criteria:

- 5,000 square feet or less in size;
- Platted prior to June 1, 1999;
- Located in intensely developed areas (houses present on both sides immediately adjacent to the lot); and
- Not located adjacent to approved or conditionally approved shellfish waters.

S.L. 2001-418 authorizes the CRC to adopt temporary rules establishing the following additional exceptions to the 30-foot buffer:

- Construction of a residential structure on a lot of 7,500 square feet or less that was (i) platted prior to June 1, 1999; (ii) will be served by an on-site septic system; and (iii) is located in an intensely developed area.
- Construction of a residential structure with a footprint of up to 1,200 square feet on a lot of 5,000 square feet or more that was platted prior to June 1, 1999, where strict application of the buffer requirement would preclude construction of the residential structure.
- Construction of non-water dependent uses that have minimal impact on water quality, including but not limited to fences.

The act also authorizes the CRC to adopt temporary rules to amend 15A NCAC 7H .1205, which establishes specific conditions for the construction of piers, docks, and boathouses in public trust waters, to allow existing piers to be modified structurally in order to prevent or minimize storm damage to the pier. The temporary rules adopted pursuant to this portion of the act become effective upon adoption by the CRC and would remain in effect until permanent rules to replace them become effective.

**Riparian Buffers:** The act also extends the effective date of the temporary rules adopted by the EMC pursuant to S.L. 1999-329 (Implementation of basinwide water quality management plans for the Cape Fear, Catawba, and Tar-Pamlico River Basins) from July 1, 2001, until September 1, 2003. This extension is designed to allow the EMC additional time to consult with interested and affected persons in the upper and lower Catawba River Basin before adopting a permanent rule to replace the temporary rule. The act requires that vested rights recognized or established under common law or by counties, cities, and towns prior to July 1, 2001, be exempted from application of temporary rule 15A NCAC 2B .0243. This confirms that the temporary riparian buffer protection rule may not restrict a vested right to undertake or complete development.

The act became effective September 22, 2001. (TD)

## **CAMA/Modify Estuarine Buffer Exemption/Grants**

S.L. 2001-494 (HB 1268) clarifies the definition of an "intensely developed area" in the instances where it is used as a criterion for exemption under the thirty-foot buffer requirement on coastal shorelines (15A NCAC 07H .0209(e)). Coastal shorelines include the non-ocean shorelines found along estuaries, sounds, and bays. A lot may be granted an exemption from the buffer requirements if the lot meets the criteria set out in the rule and the following additional criteria:

- The lot on which the proposed residential structure is to be built is located between:
  - Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer, or
  - An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot.

- Development of the lot minimizes the impact to the buffer and reduces runoff by limiting land disturbance to only so much as necessary to construct and provide access to the residence and to allow installation or connection of utilities.
- Placement of the residential structure and pervious decking does not extend further into the buffer than existing residential structures and existing pervious decking on adjoining lots.

The act authorizes the Coastal Resources Commission (CRC) to adopt a temporary rule to incorporate the provisions of the act. The temporary rule would remain in effect until a permanent rule to replace it becomes effective. The act also states that the language of the act does not limit the authority of the CRC to adopt rules regulating coastal shoreline development or development within areas of environmental concern.

The act also authorizes the Environmental Review Commission (ERC) to study the standards for the granting of variances by the CRC under the Coastal Area Management Act (G.S. 113A-120.1). The ERC may consider the decision of the Court of Appeals in Williams v. North Carolina Department of Environment and Natural Resources et al. and any subsequent proceedings. The ERC may report its findings and recommendations, if any, to the 2002 regular session of the 2001 General Assembly.

Lastly, the act also authorizes the Department of Environment and Natural Resources (DENR) to carry forward to the next fiscal year any funds that have been awarded to local governments in coastal areas for the development of local plans and management programs.

The act became effective December 19, 2001. (TD)

## **Environmental Health**

### **Sanitation Rules/Family Foster Homes Exempt**

S.L. 2001-109 (SB 541). See **Children and Families**.

### **Well Construction Standards/Rulemaking**

S.L. 2001-113 (HB 609) sets out the minimum separation distances required between wells serving single-family dwellings and certain possible sources of contamination where lot size or other conditions preclude the larger separation distances required by the administrative rule that regulates the construction of wells. It also authorizes the Environmental Management Commission (EMC) to adopt a temporary rule consistent with these minimum separation distances and allows the EMC to adopt a permanent rule that may vary from the minimum separation distances set out in the act.

The act became effective May 14, 2001. (JH)

### **Septage Mgt./On-site Wastewater Systems/Liability**

S.L. 2001-505 (HB 1019) amends the solid waste management statutes to (i) increase septage management permit fees, (ii) place additional permit and training requirements on septage management firm operators, and (iii) provide for the use of temporary domestic wastewater holding tanks under certain circumstances.

In addition, the act clarifies the approval process for experimental, controlled demonstration, innovative, and accepted onsite wastewater treatment systems by establishing a timeline for system evaluation and by establishing an application fee for manufacturers requesting a review of their wastewater system for use in North Carolina. Approval of experimental, controlled demonstration, and innovative wastewater systems is the responsibility of the Department of Environment and Natural Resources (DENR). Approval of accepted wastewater systems is the responsibility of the Commission for Health Services. When a manufacturer of an innovative or accepted wastewater

system applies for a reduction of more than 25 percent in the required length of their total nitrification trench, DENR shall require a performance warranty for the nitrification trench system for a period of at least five years. The Commission for Health Services is directed to establish the minimum terms and conditions for the warranty. The act also directs DENR to complete the review of applications received prior to October 1, 2001, for wastewater treatment systems before accepting applications for additional evaluation. DENR must complete the expedited review of current applications within 120 days of the date on which the act became law, December 19, 2001.

The act also directs the Public Officers and Employees Liabilities Insurance Commission in the Department of Insurance to provide liability insurance coverage for local health department sanitarians (environmental health specialists) defended by the State. For insurance purposes only, these sanitarians are considered to be employees of DENR.

The act and the sections related to wastewater treatment became effective December 19, 2001. The sections of the act that address septage management and liability coverage for local sanitarians became effective January 1, 2002. (TD)

## **Fisheries**

### **Amend Fisheries Laws**

S.L. 2001-213 (SB 202) amends various marine fisheries laws as follows:

The act requires the Marine Fisheries Commission (MFC) to review each Fishery Management Plan (FMP) at least once every five years. Prior to June 15, 2001, the MFC revised each FMP at least once every three years. This part of the act became effective June 15, 2001.

The act repeals the sunsets on the licensing provisions of the Fisheries Reform Act of 1997 and the Marine Fisheries Amendments of 1998. Prior to July 1, 2001, these licensing provisions were scheduled to sunset on September 1, 2003. This part of the act became effective July 1, 2001.

The act extends the moratorium on issuing new shellfish cultivation leases in Core Sound from October 1, 2001, to October 1, 2002, effective July 1, 2001.

The act also staggers the three-year terms of members of the MFC so that the term of only one of the three commercial interest members and the term of only one of the three recreational interest members expire each year. Prior to June 30, 2001, the terms of all three commercial interest members expired at the same time and the terms of all three recreational interest members expired at the same time. The act adjusts the terms of some current members and some subsequent appointees so that the term of no sitting member is shortened. These sections of the act became effective June 30, 2001. (JH)

## **Parks & Public Spaces**

### **State Nature and Historic Preserve**

Res. 2001-18 (SJR 853) accepts State properties into the State Nature and Historic Preserve (Preserve) and S.L. 2001-217 (SB 854) codifies the acceptance of these properties, removes tracts from the Preserve and the State Parks System, excludes a tract from acceptance into the Preserve and removes it from the State Parks System, and removes certain other tracts from the State Parks System. In addition, the act amends Section 4 of S.L. 1999-268 to allow a vote during the next statewide primary election on whether to amend the North Carolina Constitution to provide that properties may be accepted into the Preserve through the enactment of a bill without an accompanying joint resolution.

The Preserve is intended to insure that lands and waters acquired and preserved by the State of North Carolina or its political subdivisions for park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. The General Assembly accepts the properties into the Preserve by a joint resolution adopted by a vote of three-fifths of the members of each house. The resolution accepting properties into the Preserve must also be codified in the General Statutes through the enactment of a bill. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house. The last time State properties were accepted into the Preserve was in 1999. Since that time over 7,800 acres have been added to various State parks and State natural areas.

S.L. 2001-18 (SJR 853) became effective June 7, 2001. S.L. 2001-217 (SB 854) became effective June 15, 2001. (RZ)

## **Person/Caswell Lake Eligible for Trust Funds**

S.L. 2001-114 (HB 1108) specifies that public authorities are eligible to receive matching grants from the Parks and Recreation Trust Fund (Fund). Under G.S. 113-44.15(b), the North Carolina Parks and Recreation Authority is directed to allocate 30% of the funds available in the Fund to local governmental units for local park and recreation purposes through its matching grants program. Public authorities are defined separately from local governmental units, which created an eligibility question for grants and funds. S.L. 2001-114 resolves the eligibility question by specifying that both public authorities and local governmental units may receive grants from the Fund.

The act became effective May 24, 2001, and applies to grants awarded on or after that date. (TD)

## **Terms for Members of the North Carolina Parks and Recreation Authority**

S.L. 2001-424, Sec. 19.3 (SB 1005, Sec. 19.3) staggers the terms of members of the North Carolina Parks and Recreation Authority; lengthens the terms from two years to three years; provides that if a member has served two consecutive terms, the member is not eligible for reappointment to the Authority for at least one year after the expiration of the member's most recent term; and provides for the transition to a schedule of staggered terms.

This section became effective July 1, 2001. (JH)

## **Solid Waste**

### **On-site Demolition Debris Landfills**

S.L. 2001-357 (SB 783) amends G.S. 130A-301.2 (On-site Demolition Debris Landfills) and delays its repeal from June 30, 2001, to September 30, 2003. G.S. 130A-301.2 provides that a person may dispose of demolition debris generated on land that the person owns in a landfill that is located on the same parcel or tract of land and that has a disposal area of one acre or less without obtaining a permit from the Department of Environment and Natural Resources (DENR) if the disposal meets certain conditions. The act clarifies that the board of commissioners of the county in which the landfill is proposed to be located may approve the landfill only if the board finds that all of the following conditions have been met:

- The landfill is located at least one-quarter mile from any other landfill of any type.
- The perimeter of the landfill is at least 50 feet from the property boundary.
- The perimeter of the landfill is at least 500 feet from the nearest drinking water well.

- The perimeter of the landfill is at least 50 feet from any stream or river. (The act adds this requirement).
- The waste disposal area of the landfill is at least four feet above the seasonal high groundwater table.
- The landfill will comply with all applicable federal, State, and local laws, regulations, rules, and ordinances.

The act adds a new requirement that the owner file a certified copy of the notice showing the book and page number where recorded and a certified copy of the survey plat showing the book and page number where recorded with the board of commissioners rather than directly with DENR. The act requires the board of commissioners to forward copies of these documents to DENR along with a certification that the requirements of G.S. 130A-301.2 have been met.

The act became effective June 30, 2001. (RZ)

## Strengthen Littering Laws

S.L. 2001-512 (SB 1014) amends G.S. 14-399, which prohibits littering and specifies various penalties for littering offenses, to establish new littering offenses for unintentional littering, effective March 1, 2002. An unintentional littering violation in the amount of 15 pounds or less is an infraction punishable by a fine of up to \$100 and possible community service of between 4 and 12 hours. A second or subsequent violation within three years is an infraction punishable by a fine of up to \$200 and possible community service of between 8 and 24 hours. The term "litter" does not include nontoxic and biodegradable, agricultural or garden products or supplies, including mulch, tree bark, and wood chips with respect to unintentional violations in the amount of 15 pounds or less. An unintentional littering violation in the amount of over 15 pounds up to 500 pounds is an infraction punishable by a fine of up to \$200 and possible community service of between 8 and 24 hours. An unintentional violation involving over 500 pounds is an infraction punishable by a fine of up to \$300 and possible community service of between 16 and 50 hours. The act provides that unintentional littering does not include the accidental blowing, scattering, or spilling of an insignificant amount of municipal solid waste during the automated loading of a vehicle designed and constructed to transport municipal solid waste if the vehicle is operated in a reasonable manner and according to manufacturer specifications.

The act amends the definition of "litter" to provide that political pamphlets, handbills, religious tracts, newspapers, and other similar materials are not considered "litter" only when they are being used for or distributed in accordance with their intended use.

The act clarifies that all law enforcement officers, except company police officers, have the duty to enforce G.S. 14-399. County and municipal litter enforcement officers are also charged with enforcing G.S. 14-399.

Effective June 1, 2002, the act amends G.S. 20-116(g), which specifies vehicle loading requirements, to provide that when a vehicle licensed for more than 7,500 pounds gross vehicle weight is loaded with rock, gravel, stone, or any similar substance other than sand, the height of the load against all four walls must not extend above a horizontal line six inches below the top of the vehicle when loaded and the load must be securely covered by a tarp or other covering. The act does not change the existing law as it applies to a vehicle licensed for 7,500 pounds or less gross vehicle weight, or a vehicle loaded with sand. Such vehicles must either be constructed so as to prevent any of their load from escaping from the vehicle, loaded so that the height of the load against all four walls does not extend above a horizontal line six inches below the top of the vehicle when loaded, or tarped. The act also requires that vehicles be free from any holes, cracks, or openings through which any material may escape. The act provides that "load" does not include water accumulated from precipitation.

Effective January 1, 2002, the act requires the Department of Transportation (DOT) to schedule, to the extent practicable, the removal of debris, trash, and litter from the highway and the highway right-of-way prior to any mowing of the right-of-way. DOT must include as a term in any

contract that it enters into for the mowing of a highway right-of-way that the contracting party must, to the extent practicable, coordinate with the scheduled removal of debris, trash, and litter from the highway and highway right-of-way prior to the mowing of the right-of-way.

Effective January 1, 2002, the act requires DOT to place signs on the Interstate Highway System notifying motorists of the penalties for littering. DOT must also provide and maintain recycling containers at highway rest stops for all of the following materials for which recycling is feasible:

- Aluminum
- Newspaper
- Recyclable glass
- Plastic bottles

Effective January 1, 2002, the act requires every State agency, including the General Assembly, the General Court of Justice, and the University of North Carolina, to expand its recycling program to provide that recycling containers are readily accessible on each floor where State employees are located in a building occupied by a State agency. The program shall provide for the collection of the following materials:

- Aluminum
- Newspaper
- Sorted office paper
- Recyclable glass
- Plastic bottles

The act authorizes counties and municipalities to adopt littering ordinances enforceable by civil penalties and other remedies. In addition, counties and municipalities may appoint environmental enforcement officers to enforce these ordinances.

The act provides that at the time a candidate files for election to public office with the State Board of Elections or a county board of elections, the applicable board must inform the candidate of the law concerning the placement of campaign signs in highway right-of-ways and on utility poles.

The act directs the Governor to compile litter enforcement, litter prevention, and litter removal information from DOT, the Department of Correction, the Department of Crime Control and Public Safety, the State Highway Patrol, the Wildlife Resources Commission, the Division of Parks and Recreation in the Department of Environment and Natural Resources, the Division of Marine Fisheries in the Department of Environment and Natural Resources, and the Administrative Office of the Courts, and to present a consolidated semiannual report to the Environmental Review Commission, the Joint Legislative Transportation Oversight Committee, and the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources. The first semiannual report is to be delivered to the respective legislative entities by March 1, 2002.

The act provides that local school boards shall encourage recycling in public schools and may develop and implement recycling programs at public schools. The State Board of Education is directed to report to the Joint Legislative Education Oversight Committee and the Environmental Review Commission by December 15 of the years 2003 through 2007 on the recycling efforts of public schools. If either the Joint Legislative Education Oversight Committee or the Environmental Review Commission determines that sufficient progress in establishing recycling programs in the public schools of the State has not been made by January 1, 2008, it shall recommend legislation to the 2008 Regular Session of the 2007 General Assembly to continue the reporting requirement established by this section.

The act provides that it shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of the act. Every agency to which the act applies must implement the provisions of the act from funds otherwise appropriated or available to the agency.

The act became effective January 4, 2002, and, unless otherwise stated, the sections of the act became effective on that date. (RZ)



# Underground Storage Tanks

## Clarify Petroleum LUST Cleanup Requirements

S.L. 2001-384 (HB 1301) clarifies the circumstances under which cleanups of environmental damage in risk-based regulatory programs are subject to land-use restriction requirements. The term "unrestricted use standards" is defined as generally applicable standards that, when applied to the cleanup of a contaminated property, would result in restoration of the property to a condition such that any use of the property would not pose a danger or risk to public health, the environment, or users of the property that is significantly greater than the risk posed by the property prior to its having been contaminated. "Risk-based" is defined to mean a cleanup or remediation that, although not in compliance with unrestricted use standards, does not pose a significant danger or risk so long as the property is used in a manner that is consistent with the assumptions as to the condition and use of the property on which the determination that the level of risk is acceptable is based. The act amends the statutory provisions governing all risk-based cleanup programs to incorporate these two newly defined terms.

Land-use restrictions for a site that is contaminated by a discharge or release of petroleum from a leaking petroleum underground storage tank (UST) are required when the site is cleaned up under a risk-based approach to a cleanup level that does not meet unrestricted use standards. The restrictions are enforceable only with respect to (i) the real property on which the source of the contamination is located and (ii) any real property on which contamination is located at the time the remedial action plan is approved and that was owned or controlled by any owner or operator of the UST or other responsible party at the time the discharge or release of petroleum is discovered or reported or at any time thereafter. The current or future use of sites contaminated with remedial petroleum may be restricted only as follows:

- Where soil contamination will remain in excess of unrestricted use standards, the property may be used for a primary or secondary residence, school, daycare center, nursing home, playground, park, recreation area, or other similar use only with the approval of the Department of Environment and Natural Resources (DENR).
- Where soil contamination will remain in excess of unrestricted use standards and the property is used for a primary or secondary residence that was constructed before the release of petroleum that resulted in the contamination is discovered or reported, the Secretary of DENR may approve alternative restrictions that are sufficient to reduce the risk of exposure to contaminated soils to an acceptable level while allowing the real property to continue to be used for a residence.
- Where groundwater contamination will remain in excess of unrestricted use standards, installation or operation of any well usable as a source of water shall be prohibited.
- Any restriction on the current or future use of the real property that is agreed upon by both the owner of the real property and DENR.

The act makes clarifying changes to the procedures for recordation of contaminated sites not resulting from leaking petroleum USTs (G.S. 143-279.10) to conform to the definitions and requirements of the act and establishes guidelines for recordation of residual petroleum from a UST. These guidelines are similar to those in G.S. 143-279.10. The act also updates G.S. 47-29.1, which relates to recordation by registers of deeds, to include all programs that provide land-use restrictions as part of risk-based clean-up action. These include Brownfields Properties, Oil or Hazardous Substance Discharge Sites, Dry-Cleaning Solvent Remediation Sites, Contaminated Sites, and Residual Petroleum Sites. (Only the Residual Petroleum Sites provision refers to a new statute.)

Under the provisions of the act, the costs associated with recordation of residual petroleum are reimbursable from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund if the Cleanup Funds are responsible for payment of remediation activities. Costs resulting from cleanup to a more protective standard than the risk-based standard required by DENR are reimbursable only if the

cleanup to a more protective standard is necessary to resolve a third party claim for property damage. In addition, compensation to third parties is reimbursable only if the owner, operator, or other responsible party has complied with applicable laws.

The act became effective September 1, 2001, and applies to any cleanup of petroleum under the Leaking Petroleum Underground Storage Tank Cleanup Program for which a determination of no further action required was not made prior to September 1, 2001. (GG, TD)

## **Pay for Performance/ LUST Cleanups**

S.L. 2001-442 (HB 1063) authorizes the Department of Environment and Natural Resources (DENR) to implement a pay-for-performance program beginning October 1, 2001. A pay-for-performance program allows DENR to select qualified contractors for site cleanup using a competitive bidding process. The critical elements of a performance-based contract include the timeline for cleanup and the cleanup cost. DENR may allocate up to 50% of the available funds in the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund for performance-based cleanups of petroleum-contaminated sites. The act authorizes the Environmental Management Commission (EMC) to develop temporary rules for implementation of the program.

The act also excludes performance-based cleanups of petroleum-contaminated sites from the definition of a State capital improvement project and from the definition of a State building. This exempts performance-based cleanups from oversight by the State Building Commission and the Department of Administration.

Lastly, the act authorizes the State Building Commission to adopt temporary rules to authorize open-end design and construction agreements for wetlands mitigation and similar projects.

The act became effective October 15, 2001. (GG, TD)

## **Underground Storage Tank Program Funds**

S.L. 2001-454 (HB 1299) appropriates \$495,000 from the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources in fiscal year 2001-2002 and fiscal year 2002-2003 to support the administration of the Leaking Petroleum Underground Storage Tank Cleanup Program.

The act also directs the Environmental Review Commission (ERC) to study the appropriation made from the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund to determine whether adjustments should be made to amounts appropriated from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund for program administration. The ERC shall report its findings and recommendations, if any, to the 2003 General Assembly.

The act became effective July 1, 2001. (TD)

# **Water Quality/Quantity/Groundwater**

## **Extend Swine Moratoria/ Animal Waste Amends**

S.L. 2001-254 (HB 1312) extends the moratoria on the issuance of permits by the Environmental Management Commission (EMC) for the construction of a new swine farm or expansion of an existing swine farm from July 1, 2001, until September 1, 2003.

The act also amends G.S. 143-215.10C(a), which imposes the requirement that a person obtain a permit to operate an animal waste management system, to include a broader range of water quality statutes. Under previous law, permits for animal waste management systems were issued

under Parts 1 and 1A of Article 21 of Chapter 143 of the General Statutes. Part 1 governs the overall water quality program, including State implementation of the federal National Pollutant Discharge Elimination System (NPDES) program. Part 1A governs animal waste management systems. Most animal waste management systems are permitted under a general permit issued under Part 1A. This provision clarifies the authority of the EMC and the Department of Environment and Natural Resources (DENR) to issue a general permit under the overall water quality statutes. The EMC and DENR expect to develop a general permit for animal waste management systems that conforms to the requirements of the NPDES program.

The act repeals the provision that allows an applicant to consider their permit to construct or operate an animal waste management system as approved if the EMC and DENR fail to act on the application within ninety days of submission. The United States Environmental Protection Agency (EPA) retains the authority to review permits under the NPDES program that are issued by state regulatory agencies.

The act extends the animal operation inspection pilot program being conducted in three counties from July 1, 2001 to September 1, 2002. Under the pilot program, the Division of Soil and Water Conservation of DENR may perform the required annual inspection of animal operations permitted under Article 21 of Chapter 143 of the General Statutes. The act establishes two additional interim reporting dates, and delays the final report date from July 15, 2001 to October 15, 2002.

The act became effective June 30, 2001. (TD)

## **Dry-Cleaning and White Goods Corrections**

S.L. 2001-265 (HB 1062) makes changes to the laws regarding the management of white goods and the cleanup of properties contaminated with dry-cleaning solvent.

The Dry-Cleaning Solvent Cleanup Act of 1997 (1997 Act) was enacted to facilitate the cleanup of contamination at dry-cleaning facilities. The 1997 Act provides that owners of dry-cleaning facilities, after satisfying applicable deductibles and co-payments, may seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund (Fund) for costs associated with the cleanup of contaminated dry-cleaning sites. The Fund is currently funded by a tax on dry-cleaning solvent. The 1997 Act was amended during the 2000 Regular Session of the General Assembly to increase the tax on the solvent, effective October 1, 2001, from \$5.85 to \$10 per gallon of dry-cleaning solvent that is chlorine-based and from \$0.80 to \$1.35 per gallon of dry-cleaning solvent that is hydrocarbon-based. The act moves up the effective date of the increase in the tax on dry-cleaning solvent from October 1, 2001, to August 1, 2001.

The act provides that any person who undertook cleanup of a dry-cleaning site pursuant to a notice of violation or enforcement action by the Department of Environment and Natural Resources between October 1, 1997, and June 30, 2001, may seek reimbursement from the Fund for any costs exceeding \$50,000. In addition, any person who, as of June 30, 2001, was cleaning up a dry-cleaning site may seek reimbursement from the Fund and any costs expended on cleanup that are necessary and reasonable will be credited toward the applicable deductible. Total payments made pursuant to these provisions in a fiscal year may not exceed 10% of the revenues credited to the Fund in the preceding fiscal year. These provisions were effective retroactively to January 1, 2000.

The act repeals Section 19 of S.L. 2000-19, which directed the Commission for Health Services to adopt a rule that mandates that all waste containing dry-cleaning solvent, except for wastewater, be disposed of in a licensed facility. Other provisions of law already require this. The act extends the authority of the Environmental Management Commission and the Commission for Health Services to adopt temporary rules to implement the dry-cleaning solvent cleanup program.

The act makes conforming changes to the repeal in 2000 of the sunset of the white goods disposal tax.

The act became effective July 4, 2001. (RZ)

## Water Quality/Livestock Markets/Animal Ops

S.L. 2001-326 (SB 848) amends the definition of an animal operation to include public livestock markets and allow public livestock markets to choose to comply with either (i) the waste management requirements applicable to an animal operation or (ii) the requirements applicable under an individual non-discharge permit. The permit fees and testing requirements applicable to animal operations are less than those required under an individual non-discharge permit. However, animal waste management systems that serve animal operations undergo yearly inspections by both the Division of Water Quality and the Division of Soil and Water Conservation. A person who chooses to operate under the requirements of a non-discharge permit would not be required to comply with the requirements applicable to animal waste management systems and vice versa.

The act became effective August 1, 2001. (TD)

## Tar-Pamlico Agricultural Rule

S.L. 2001-355 (HB 570) provides for implementation of the Tar-Pamlico Agricultural Rule (15A NCAC 2B .0256) beginning September 1, 2001, with the following modifications:

- Adjusts the membership of the Local Advisory Committees (LACs) to ensure greater representation of farmers.
- Delegates authority to appoint members to LACs to the Commissioner of Agriculture, the Director of the Division of Water Quality, and the Director of the Division of Soil and Water Conservation.
- Modifies the threshold number of animals required to be considered an agricultural operation under the Agricultural Rule.
- Allows the one-time harvest of trees within a riparian buffer that were established after September 1, 2001, under certain conditions. The act also allows the one-time harvest of trees that were established under an agricultural incentive program prior to September 1, 2001, that are located within a riparian buffer.
- Delays the requirements for implementation of best management practices (BMPs) for pasture-based production or management of livestock until BMPs have been approved by the Soil and Water Conservation Commission (SWCC) and until the Environmental Management Commission (EMC) approves a nutrient loading accounting methodology that includes credit for reductions in nutrient loading that have been achieved since January 1, 1992.
- Directs the SWCC to approve a point system applicable to pasture management practices by September 1, 2002.
- Outlines procedures to ensure involvement of pasture-based livestock production interests in the development of BMPs, the point system applicable to pasture management practices, and the nutrient loading accounting methodology.
- Authorizes the EMC to adopt temporary rules to implement provisions of the act.

The act became effective August 10, 2001. The modified rule became effective September 1, 2001. (GG, TD)

## Neuse River Water Quality Reclassification

S.L. 2001-361 (HB 612) delayed the effective date of administrative rule 15A NCAC 2B .0315, which reclassifies certain waters in the Neuse River Basin for water supply purposes. The rule delays the effective date from April 1, 2001 to July 1, 2004, unless the 2004 Regular Session of the 2003 General Assembly specifically disapproves the rule.

The act became effective August 10, 2001. (TD)

## **Stream Identification for Buffer Rules**

S.L. 2001-404 (HB 1257) directs the Division of Water Quality (DWQ) of the Department of Environment and Natural Resources (DENR) to develop the Surface Water Identification Training and Certification Program (Program). The Program will train qualified employees of the Division of Water Quality, the Division of Forest Resources, and employees of local governments how to determine the presence of surface waters that would require the application of rules for the protection of riparian buffers. The Director of DWQ may review determinations made by certified individuals and may override determinations, as well as revoke the certification of an individual who is failing to make correct determinations.

DWQ will develop standard forms for making determinations and reports. Priority will be given to training and certifying the most highly qualified and experienced personnel in each agency. All reports of determinations must be maintained and made available to the public. DWQ shall also evaluate the effectiveness of the Program and report its findings and recommendations to the Environmental Review Commission.

The act provides that it shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of the act. Every agency to which the act applies must implement the provisions of the act from funds otherwise appropriated or available to the agency.

The act became effective September 6, 2001, and will expire September 1, 2004. (TD)

## **Reallocate Clean Water Bonds/Defer Bond Issue**

S.L. 2001-416 (SB 247). See **Taxation**.

## **North Carolina Water Quality Workgroup Initiative/Rivernet Monitoring System Pilot Program/Research Funds**

S.L. 2001-424, Sec. 19.5 (SB 1005, Sec. 19.5) codifies the directive; previously set out in subsections 15.14(a) through (g) of S.L. 1999-237, to the Department of Environment and Natural Resources and North Carolina State University to jointly establish the North Carolina Water Quality Workgroup. The Workgroup works with various State agencies and North Carolina State University to review and make recommendations regarding scientific and State agency databases related to water quality in the State. The Workgroup will also develop the Rivernet water quality monitoring and information dissemination system. The Workgroup will report on its activities, findings, and recommendations to various legislative and academic entities by January 30 of each year.

This section became effective July 1, 2001. (JH)

## **Allocation of Water/Sewer Service Costs**

S.L. 2001-502 (HB 1061) authorizes the Utilities Commission to adopt rules that allow a lessor to allocate the costs for providing water and sewer service on a metered use basis to persons who occupy the same contiguous premises. The act specifies the following conditions that apply to the allocation of the costs of water and sewer service:

- The written rental agreement must specify a monthly rent that consists of the sum of the base rent plus additional rent to cover the cost of providing water and sewer service. The additional rent for water and sewer services may not exceed the actual purchase price of the water and sewer service plus a reasonable administrative fee.
- An arrearage in additional rent owed by a tenant for water and sewer services may not be used as a basis for termination of a lease or eviction.
- Any partial payment of monthly rent will first be applied to the base rent.

- A lessor may not charge a late fee to a lessee because of the lessee's failure to pay additional rent for water and sewer services.
- A lessor may recover the costs of providing water and sewer services from the security deposit if the tenant fails to pay for the services.

The act became effective December 19, 2001. (TD)

## **Miscellaneous**

### **Soil and Water Conservation Commission Powers & Duties**

S.L. 2001-284 (HB 1111) amends the statutory powers and duties of the Soil and Water Conservation Commission (SWCC) to formalize the following functions:

- Development and implementation of a program for the approval of technical specialists and for the development and approval of best management practices (BMPs) for use in the State's water quality protection programs. Technical specialists approve animal waste management system plans and certify that BMPs in an animal waste management plan meet the applicable minimum standards and specifications.
- Development and approval of BMPs for use in animal waste management plans and other programs, including the NC Agriculture Cost Share Program and Nonpoint Source (NPS) Management Program.

The act became effective July 13, 2001. (TD)

### **Continue One-Stop Permit Assistance Pilot Program**

S.L. 2001-424, Sec. 19.6 (SB 1005, Sec. 19.6) directs the Department of Environment and Natural Resources (DENR) to continue the one-stop environmental permit application assistance and tracking system established as a pilot project by Section 13.7 of S.L. 2000-67. The pilot project is to be continued for the 2001-2003 fiscal biennium. The General Assembly intends that if the resources are available, the pilot program will be expanded to a statewide program during the 2001-2003 fiscal biennium.

Under the pilot project, DENR must provide to each person who submits a complete permit application at one of the participating regional offices (Mooresville and Wilmington Regional Offices) 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 this provision.

DENR will 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, 2002, and April 1, 2003.

This section became effective July 1, 2001. (JH)

### **Fair Geographic Representation in Appointments to the Environmental Management Commission**

S.L. 2001-424, Sec. 19.13 (SB 1005, Sec. 19.13) directs the appointing authorities to make every effort to ensure fair geographic representation in the appointment of members to the Environmental Management Commission (EMC). The EMC is composed of 13 members appointed by

the Governor, 3 members appointed upon the recommendation of the Speaker of the House of Representatives, and 3 members appointed upon the recommendation of the President Pro Tempore of the Senate. (S.L. 2001-486, Sec. 2.16 (SB 571, Sec. 2.16) increased the appointments upon the recommendation of the Speaker and the President Pro Temp from 2 to 3 each).

This section became effective July 1, 2001. (JH)

## Issuance of Temporary Rules Governing Minimum Criteria Transportation Projects

S.L. 2001-424, Sec. 27.22 (SB 1005, Sec. 27.22). See **Transportation**.

## Amend Environmental/Health Laws

S.L. 2001-440 (SB 312) makes the following changes to the Well Contractors Certification Act:

- Requires that a contractor offering to perform any well contractor activity be certified.
- Shortens the time allowed for renewal of contractor certification from 3 months to 30 days following expiration of certification.
- Prohibits the Well Contractors Certification Commission (Commission) from issuing a certificate to a contractor who has outstanding penalties, failed to comply with restoration requirements, or has a history of significant noncompliance.
- Exempts persons who are over 70 years of age and meet certain other requirements from continuing education requirements established by the Commission. The exemption sunsets on September 1, 2008.
- Increases the maximum penalty for violations from \$100 per violation to \$1,000 per violation.
- Authorizes the Commission to adopt temporary and permanent rules to alter minimum education, experience, and knowledge requirements related to certification.

The act also:

- Exempts anhydrous ammonia installations built for non-fertilizer purposes from regulation by the Board of Agriculture.
- Stipulates that an incinerator not solely owned or operated by the generator of the solid waste may receive a permit to operate only if the Department of Environment and Natural Resources (DENR) approves a plan to prevent the incineration of wastes listed in G.S. 130A-309.10(f1), which includes antifreeze, aluminum cans, white goods, and lead-acid batteries. The plan must be submitted at the time of an application for a permit and must require the random visual inspection of materials to be incinerated, as well as training and record keeping requirements. Incinerators that dispose only medical waste are exempted from these requirements. The operator of an incinerator that is subject to these requirements and that has already been issued a permit must submit a plan to DENR within 90 days of October 15, 2001. DENR must review and either approve or deny the plan within 90 days of the day the plan is submitted.
- Directs the Environmental Management Commission to adopt temporary rules to implement federal requirements for small municipal waste incinerators.
- Directs the Lower Cape Fear River Research and Education program to pursue and apply for funding to conduct water quality and sediment sampling for heavy metals and other contaminants in the Lower Cape Fear River.
- Narrows the exemption from the regulations for food and lodging establishments that serve food or drink no more frequently than once a month to include only establishments operated by nonprofit corporations, tax-exempt organizations, or political committees.

Catered elderly nutrition programs operated by the Department of Health and Human Services in connection with a fundraising event are exempt.  
The act became effective October 15, 2001. (TD)

## **Environmental Report Consolidation**

S.L. 2001-452 (HB 1006) repeals obsolete environmental reporting requirements and makes technical corrections to other environmental reporting requirements. In addition, the act consolidates a number of separate solid waste reports into one comprehensive solid waste management report. The Department of Environment and Natural Resources is responsible for preparing the comprehensive solid waste management report and will submit it to the Environmental Review Commission by January 15<sup>th</sup> of each year.

The act became effective October 28, 2001. (RZ)

## **Environmental Technical Corrections**

S.L. 2001-474 (SB 920) makes the following technical changes and corrections to environmental statutes:

- Repeals Chapter 130B of the General Statutes, which created the North Carolina Hazardous Waste Management Commission, and deletes statutory references to the Commission.
- Deletes statutory references to the Southeast Interstate Low-Level Radioactive Waste Management Compact and the North Carolina Low-Level Radioactive Waste Management Authority, both of which were repealed in 1999.
- Corrects agency names and references.
- Makes other clarifying and conforming changes.

The act became effective November 29, 2001, except for Section 26 of the act, which becomes effective July 1, 2003. (TD)

## **Environmental Management Commission Appointments**

S.L. 2001-486, Sec. 2.16 (SB 571, Sec. 2.16) increases the appointments made to the Environmental Management Commission upon the recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate from two to three each.

This section became effective December 16, 2001, and the terms of the additional appointments began on July 1, 2001. (TD)

## **Tax Revenue for Turfgrass Research/Mental Health**

S.L. 2001-514 (HB 688). See **Taxation**.

## **Major Pending Legislation**

### **Consistent Risk-Based Remedial Actions**

HB 1009 (Second Edition) directs the Department of Environment and Natural Resources (DENR) to develop a risk-based approach to environmental cleanup as a voluntary alternative to certain State cleanup programs. The Secretary of Environment and Natural Resources would adopt



rules to implement the risk-based program, including methods to assess, prioritize, and remediate contaminated sites that would apply to a wide range of contaminants. The rules would be consistently applied to cleanup activities, but would allow for reasonable distinctions among contaminated areas based on relevant factors such as (i) the nature of the environmental contamination, (ii) the risk of harm posed by the contamination, (iii) the size and complexity of the contaminated area, and (iv) the current and anticipated future uses of the contaminated area and adjacent lands.

A "risk-based" process would include an evaluation of the current and future risk posed by each contaminated area and a determination of the appropriate level of remediation necessary to protect public health, safety, welfare, and the environment. The rules would include the following steps:

- Assessment of the site;
- Analysis of the current and anticipated future uses of the contaminated property;
- Determination of an acceptable level of risk based on the current and anticipated future use;
- Identification of appropriate remedial methods and the level of oversight exercised by DENR;
- Determination of the appropriateness of the use of the risk-based approach on the particular site;
- Establishment of less than pristine standards or methods to determine such standards for each contaminant;
- Certification of remediation goals and activities; and
- Establishment of measures necessary for closure of the site.

The bill would allow a person to choose to remediate a contaminated site under the guidance of the existing applicable programs or choose to proceed under the risk-based guidelines. Risk-based remediation would be available for contaminants subject to the following programs:

- The Inactive Hazardous Sites Response Act of 1987.
- The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976 (RCRA).
- The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988.
- The Brownfields Property Reuse Act of 1997.
- The Dry-Cleaning Solvent Cleanup Act of 1997.
- The federal Superfund Program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Superfund Amendments and Reauthorization Act of 1986 (SARA).
- The groundwater protection program adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

The act would become effective when it becomes law and would expire on April 1, 2005.

(TD)

## Coastal Recreational Fishing License

HB 1121 (Second Edition) would establish a program for the licensing of coastal recreational fishing. Under this program, it would be unlawful for any person to engage in recreational fishing in coastal fishing waters by means of recreational gear without holding a Coastal Recreational Fishing License (CRFL). A CRFL may be purchased from an office of the Division of Marine Fisheries or from the Division by mail. The Standard and Ten-Day CRFL may be purchased from authorized license agents.

### Types of CRFL's:

- |                 |         |                   |
|-----------------|---------|-------------------|
| ➤ Standard CRFL | \$15.00 | One year duration |
| ➤ Ten-Day CRFL  | \$5.00  | Ten day duration  |

➤ Lifetime CRFL		Lifetime duration
• Younger than 6 years of age	\$100.00	
• Between 6 and 11 years of age	\$150.00	
• Between 11 and 17 years of age	\$200.00	
• Between 17 and 65 years of age	\$250.00	
➤ Permanently Disabled Lifetime CRFL	No charge	Lifetime duration
➤ Disabled Veteran Lifetime CRFL	No charge	Lifetime duration
➤ Legally Blind Lifetime CRFL	No charge	Lifetime duration
➤ Charterboat Blanket CRFL		One year duration
• Vessel of 25 feet or less	\$200.00	
• Vessel of greater than 25 feet	\$400.00	
➤ Ocean Fishing Pier Blanket CRFL	\$4/linear foot	One year duration

Exemptions: A person may engage in recreational fishing by means of recreational gear without holding a CRFL if the person:

- Is under 16 years of age.
- Is 65 years of age or older.
- Holds a Standard Commercial Fishing License or Retired Standard Commercial Fishing License.
- Holds a Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License.

Reciprocity: North Carolina will recognize a recreational fishing license issued by another state, if that state recognizes a CRFL issued by North Carolina.

Sealife Enhancement Fund: The Sealife Enhancement Fund in the Department of Environment and Natural Resources holds proceeds from the sale of CRFLs. The Secretary of Environment and Natural Resources may disburse moneys from the Fund only upon written direction from the Marine Fisheries Commission (MFC). The MFC shall use moneys from the Fund as follows:

- Resource and habitat enhancement: Not less than 35%.
- Marine fisheries research: Not less than 35%.
- Grants for coastal fishing programs and scholarships: Not more than 5%.
- Administration: Not more than 10%.
- Public education and information: Not less than 5%, but no more than 10%.

The act would become effective March 1, 2003. (JH)

## No Air Permit Required Until Facility Operational

SB 1037 (Third Edition) would modify the procedures required before construction, expansion, modification, or operation of an air contaminant source and its components can commence. Construction of a facility with a permit could proceed without a permit modification but the facility could not operate in a manner that modifies the facility's emissions without obtaining a permit modification. Construction of a new facility could proceed without a permit except for components that are intended solely for the operation of the air contaminant source. Construction of these components and operation of the facility would require a permit. The bill would establish notification and review procedures for permit applicants, establish an application fee, and prohibit the use of economic and financial losses incurred by a person who proceeds without a permit as evidence during administrative and judicial review of permit decisions.

The act would become effective when it becomes law. (TD)

## Improve Air Quality/Electric Utilities

SB 1078 (Second Edition) would require reductions in the emissions of certain pollutants from large-scale coal-fired generating units owned by investor-owned public utilities. The bill would

establish collective emission caps for nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>), as well as a timetable for meeting these standards. The bill would also:

- Direct the Environmental Management Commission (EMC) to develop and adopt standards and plans to implement programs to achieve the collective reductions in the timeframe established.
- Direct the Utilities Commission to allow each electric utility to recover the full costs of compliance with the bill.
- Direct the State to use its resources to compel other states and entities to make similar reductions, particularly those states whose emissions adversely impact air quality in North Carolina or whose failure to make similar reductions would put the economy of North Carolina at a competitive disadvantage.
- Direct the EMC to evaluate the need for further reductions of NO<sub>x</sub> and SO<sub>2</sub>, and report its findings to the General Assembly and the Environmental Review Commission annually beginning September 1, 2004.
- Direct the Division of Air Quality (DAQ) to study issues related to the monitoring and control of mercury emissions from coal-fired generating units.
- Direct DAQ to study issues related to setting standards for carbon dioxide (CO<sub>2</sub>) emissions from coal-fired generating units and other stationary sources of air pollution.

The act would become effective when it becomes law. (TD)

## Outdoor Advertising Along I-40

SB 1098 (Second Edition) would establish a permanent moratorium on new billboards on Interstate 40 by deleting the sunset provision in the previous moratorium (S.L. 2000-101) and extending the moratorium from the Tennessee state line to the municipal limits of the City of Wilmington. The moratorium makes exceptions for the following sign types:

- Directional and other official signs and notices.
- Signs advertising the sale or lease of the property upon which the sign is located.
- Signs advertising the activities conducted on the property upon which it is located.

The act would become effective when it becomes law. (TD)

## Studies

### Legislative Research Commission

#### The 2001 Studies Bill

S.L. 2001-491, Secs. 2.1(3)(b), 2.1B and 2.1H (SB 166, Secs. 2.1(3)(b), 2.1B, and 2.1H) authorizes the Legislative Research Commission to study:

- The use of deposits on beverage containers.
- The feasibility and desirability of constructing a dam and reservoir on the Cape Fear River in Cumberland County for the purpose of establishing a regional public drinking water supply and adding the reservoir and surrounding property to the State Park System.
- Potential funding mechanisms to facilitate the conversion of agricultural operations in this State to environmentally superior management systems.

These sections became effective December 19, 2001. (TD)

## **New/Independent Studies/Commissions**

### **Joint Legislative Growth Strategies Oversight Committee**

S.L. 2001-491, Part III (SB 166, Part III) establishes the Joint Legislative Growth Strategies Oversight Committee (Committee). The Committee is directed to examine growth and development issues and strategies in North Carolina in order to make ongoing recommendations to the General Assembly on ways to promote comprehensive and coordinated local, regional, and State growth planning and public investment, taking into consideration regional differences within the State. The Committee is specifically given the authority to study the recommendations of the Commission to Address Smart Growth, Growth Management, and Development Issues that was established by Section 16.7 of S.L. 1999-237. The Committee's reports to the General Assembly may include any proposed legislation needed to implement a recommendation of the Committee.

The Committee consists of twelve members, six members of the Senate appointed by the President Pro Tempore of the Senate and six members of the House of Representatives appointed by the Speaker of the House of Representatives. The President Pro Tempore and the Speaker shall each designate a cochair of the Committee. The terms of the members of the Committee are two years and begin on the convening of the General Assembly in each odd-numbered year. However, the terms of the initial members begin on appointment and end on the day of the convening of the 2003 General Assembly.

This section became effective January 15, 2002, and expires January 16, 2005. Prior to its expiration, the Committee shall report to the General Assembly on its activities. (RZ)

### **National Heritage Area Designation Commission**

S.L. 2001-491, Part XVIII (SB 166, Part XVIII) establishes the National Heritage Area Designation Commission (Commission) to seek designation by the United States Congress of the North Carolina Appalachian Heritage Area, which would consist of 23 mountain counties in western North Carolina. The provision provides for the appointment of 17 Commission members and lists five ex-officio nonvoting members of the Commission. The Commission is directed to develop a suitability and feasibility study within the 23-county area. The Western North Carolina Regional Economic Development Commission will provide administrative and funding support to the Commission and will also develop a regional heritage tourism plan. The plan must be submitted to the 2002 Regular Session of the 2001 General Assembly by May 1, 2002.

This section became effective December 19, 2001. (TD)

### **House Select Study Committee on Various Environmental Rules**

S.L. 2001-491, Part XXV (SB 166, Part XXV) establishes the House Select Study Committee on Various Environmental Rules (Committee). The Committee may study any current rule adopted by, or any rule proposed by, the Environmental Management Commission (EMC) or by the Coastal Resources Commission (CRC) under the Coastal Area Management Act of 1974 regarding the following subjects as well as the process whereby any such rule is adopted:

- The creation, preservation, maintenance, and restoration of riparian buffers, buffers along lake shorelines, or buffers along the North Carolina coast.
- Control of erosion and sedimentation resulting from the Department of Transportation engaging in land-disturbing activities.
- The process of obtaining an air quality permit.

- Any other current rule adopted by, or any rule proposed by, the EMC or by the CRC under the Coastal Area Management Act of 1974 that the Committee determines is appropriate for study.

The purpose of the House Select Study Committee on Various Environmental Rules is to determine:

- The effect of certain environmental impacts upon tourism in the State.
- The involvement of appropriate locally elected officials in the environmental rule-making process.
- Whether an economic impact statement should be prepared for any proposed environmental rule, and, if so, whether an economic impact statement should take into account the county or the region of the State affected by the proposed environmental rule.
- The working relationships among boards, commissions, or authorities that adopt environmental rules.
- The extent to which property owners are unduly burdened by environmental rules.

The Committee membership consists of 11 members of the House of Representatives appointed by the Speaker of the House of Representatives. The Speaker shall designate two cochairs of the Committee. The Committee may meet while the General Assembly is in session with the approval of the Speaker.

The Committee may make an interim report, including recommended legislation, to the 2002 Regular Session of the 2001 General Assembly. The Committee shall submit a final report of its findings and recommendations by February 1, 2003, to the General Assembly. The Committee shall terminate upon filing its final report.

This section became effective December 19, 2001. (RZ)

## Referrals to Existing Commissions/Committees Environmental Review Commission

### Study Funding of Leaking Petroleum Underground Storage Tank Cleanup Program

S.L. 2001-454, Sec. 2 (HB 1299, Sec. 2) directs the Environmental Review Commission (ERC) to study the appropriation of \$495,000 from the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment and Natural Resources in fiscal year 2001-2002 and fiscal year 2002-2003 to support the administration of the Leaking Petroleum Underground Storage Tank Cleanup Program. The ERC will evaluate the appropriations and determine whether adjustments should be made to the amounts appropriated from the Commercial and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds. The ERC shall report its findings and recommendations, if any, to the 2003 General Assembly.

This section became effective July 1, 2001. (TD)

### Various Environmental Review Commission Studies

S.L. 2001-491, Part XIV (SB 166, Part XIV) authorizes the Environmental Review Commission (ERC) to study the following topics:

**Local Health Directors.** In consultation with the Public Health Study Commission, the ERC may study issues related to the appointment of local health directors and the potential benefits of expanding to all 100 counties the authority that certain boards of county commissioners have under G.S. 153A-77.

**Land and Water Conservation Options in North Carolina.** The ERC may study strategies to attain the State's goal of preserving one million acres of open space over the next ten years, and the long-term protection and restoration of water quality.

**Interconnection of Public Water Systems.** In consultation with the Joint Legislative Growth Strategies Oversight Committee, the ERC may study requiring the interconnection of public water systems or wastewater systems to regional systems and requiring that reasonable alternatives be reviewed before constructing or altering a public water system.

**Stormwater Programs and Policies.** The ERC may study strategies necessary to attain the State's goal of preventing environmental degradation of the State's water and groundwater resources, particularly due to stormwater impacts.

**Abandoned Mobile Homes.** The ERC may study the solid waste issues related to the abandonment and improper disposal of mobile homes. The ERC may also evaluate strategies the State and local governments may use to discourage or prevent the abandonment or improper disposal of mobile homes and facilitate the environmentally friendly disposal of mobile homes.

**Alternative Energy Sources.** The ERC may examine the availability and use of alternative energy sources in the state, including the use of biomass resources. If it undertakes this study, the ERC shall work cooperatively with other boards, commissions, and entities, taking full advantage of their resources and activities for the provision of useful information and insight.

The ERC may reports its findings and recommendations to the 2002 Regular Session of the 2001 General Assembly or the 2003 General Assembly.

This section became effective December 19, 2001. (TD)

## **Study Standards for Granting CAMA Variances**

S.L. 2001-494, Sec. 5 (HB 1268, Sec. 5) authorizes the Environmental Review Commission (ERC) to study the standards for the granting of variances by the Coastal Resources Commission under the Coastal Area Management Act (G.S. 113A-120.1). The ERC may consider the decision of the Court of Appeals in Williams v. North Carolina Department of Environment and Natural Resources et al. and any subsequent proceedings. The ERC may report its findings and recommendations, if any, to the 2002 regular session of the 2001 General Assembly.

This section became effective December 19, 2001. (TD)

## **Study Ways in Which the Cost of the I/M Program to Vehicle Owners Could Be Reduced**

S.L. 2001-504, Sec. 20 (HB 969, Sec. 20) directs the Environmental Review Commission (ERC) to review the motor vehicle inspections and maintenance (I/M) program to determine ways in which the cost of the program to vehicle owners could be reduced, including the option of requiring biennial inspections rather than annual inspections. The ERC is directed to report its findings to the 2003 General Assembly.

This section became effective December 19, 2001. (TD)

## **Joint Legislative Utility Review Committee**

### **Study Ways to Improve Air Quality**

S.L. 2001-491, Sec. 30.2 (SB 166, Sec. 30.2) authorizes the Joint Legislative Utility Review Committee to study requiring reductions in the emissions of certain pollutants from certain facilities that burn coal to generate electricity. The Joint Legislative Utility Review Committee may report its

findings and recommendations to the 2002 Regular Session of the 2001 General Assembly and to the 2003 General Assembly.

This section became effective December 19, 2001. (TD)

## **Referrals to Departments, Agencies, Etc.**

### **Division of Radiation Protection Self-Sufficiency Plan**

S.L. 2001-424, Sec. 19.7 (SB 1005, Sec. 19.7) directs the Department of Environment and Natural Resources (DENR) to develop a plan to make the Division of Radiation Protection self-supporting within two years. DENR will report on the details of the plan to the House and Senate Appropriations Subcommittees on Natural and Economic Resources no later than January 15, 2002.

This section became effective July 1, 2001. (JH)

### **DENR to Study Feasibility of Transferring Sedimentation Program to Local Governments**

S.L. 2001-424, Sec. 19.8 (SB 1005, Sec. 19.8) directs the Department of Environment and Natural Resources (DENR) to study the feasibility of transferring the sedimentation pollution control program to local governments. DENR will report its findings and recommendations to the House and Senate Appropriations Subcommittees on Natural and Economic Resources no later than April 1, 2002.

This section became effective July 1, 2001. (JH)

### **DENR Study of Environmental Permitting Process**

S.L. 2001-424, Sec. 19.11 (SB 1005, Sec. 19.11) directs the Department of Environment and Natural Resources (DENR) to study the permitting process within the Division of Water Quality related to the Coastal Area Management Act of 1974 and within the Division of Land Resources related to sedimentation and erosion control plans under the Sedimentation Pollution Control Act of 1973. DENR will report its findings and recommendations to the Cochairs of the House and Senate Appropriations Committee and to the Cochairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources no later than March 10, 2002.

This section became effective July 1, 2001. (JH)

### **Study of Catawba-Wateree River Basin Water Quality and Water Supply Issues**

S.L. 2001-491, Part XVI (SB 166, Part XVI) directs the Secretary of Environment and Natural Resources (Secretary), in cooperation with the Director of the South Carolina Department of Health and Environmental Control, to study strategies and mechanisms to promote better coordination of the activities of the two states on water quality and water supply within the Catawba-Wateree River Basin. The Secretary is to report the findings and recommendations of the study to the 2002 Regular Session of the 2001 General Assembly.

This section became effective December 19, 2001. (TD)

## Chapter 12

### Health and Human Services

Linda Attarian (LA), Erika Churchill (EC), Amy Currie (AC),  
Frank Folger (FF), and Dianna Jessup (DJ)  
and others (See references by initials on page 269 of this publication.)

## Enacted Legislation

### Health

#### **Medical Treatment by Internet/Toll-Free Number**

S.L. 2001-27 (SB 118) prohibits a person from prescribing medication to patients by use of the Internet or a toll-free telephone number unless that person is licensed and registered to practice medicine in North Carolina. The prohibition does not apply to a physician residing in another state or foreign country who is contacted by a regular patient for treatment by use of the Internet or a toll-free telephone number while the patient is temporarily in North Carolina. The act also permits the North Carolina Medical Board to bring an action in Wake County to enjoin nonresidents from engaging in the practice of medicine in North Carolina.

The act became effective December 1, 2001 and applies to offenses committed and causes of action arising on or after that date. (DJ)

#### **Disease Reporting and Investigation**

S.L. 2001-28 (HB 286) changes the laboratory reporting and record investigation requirements in the communicable and occupational disease statutes by requiring all laboratories, regardless of whether they are considered to be "clinical or pathological," to report positive test results of reportable communicable and occupational diseases and conditions. The act also permits local health directors to review the records of all laboratories pertaining to reportable diseases and conditions. Specifically, all laboratories are required:

- To send test results required by law to be reported to the Commission for Health Services.
- To permit examination, review and copying of records pertaining to the diagnosis, treatment or prevention of a communicable disease or condition.
- To send reportable findings related to occupational diseases and illnesses to the Department of Health and Human Services.

The act became effective April 19, 2001. (DJ)

#### **Long-Term Care/Post Staffing**

S.L. 2001-85 (HB 736), as amended by S.L. 2001-487, Secs. 85(a-b) (HB 338, Secs. 85(a-b)).  
See **Senior Citizens**.



## **Adult Day Care Transportation**

S.L. 2001-90 (HB 329). See **Senior Citizens**.

## **Amend Public Health Authorities Act**

S.L. 2001-92 (SB 221) clarifies that employees under the supervision of a public health authority director are employees of that authority and are exempt from the State's system of personnel administration as set forth in Chapter 126 of the General Statutes. The act also amends G.S. 130A-45.02(a) under Article 2, Local Administration, of the Public Health Chapter to provide that counties may create a public health authority only when the local board of health agrees to enter into a joint resolution with the county board of commissioners that doing so is in the interest of the public health and welfare of the county.

The act became effective May 18, 2001. (LA)

## **Amend Nursing Practice Act**

S.L. 2001-98 (SB 463) amends and updates Article 9A of Chapter 90, the Nursing Practice Act. The act adds the following components to what the "practice of nursing by a registered nurse" consists of:

- The assignment of nursing acts to other personnel.
- Being accountable for the maintenance of safe and effective nursing care.

The act adds the following components to what the "practice of nursing by a licensed practical nurse" consists of:

- The assignment and delegation of nursing interventions to other qualified personnel under the supervision of the registered nurse.
- The participation in the teaching and counseling of patients as assigned by qualified health care professionals.
- Being accountable for the maintenance of safe and effective nursing care.

The act clarifies that one of the members of the North Carolina Board of Nursing must be either a nurse practitioner, nurse anesthetist, nurse midwife, or clinical nurse specialist who must have graduated from or completed a graduate-level advanced nursing education program accredited by a national accrediting body, maintain certification requirements, and practice in a manner consistent with rules adopted by the Board and other applicable laws in order to be recognized by the Board as a registered nurse. The act also broadens the scope of the Board's disciplinary authority by allowing the Board to refuse to issue a license, refuse to issue a certificate of renewal of a license, revoke or suspend a license, or invoke other disciplinary measures, censure, or probative terms against an applicant or licensee when the applicant or licensee is determined to have committed various offenses enumerated in the Nursing Practice Act. The Board may reinstate a revoked license, censure, or probative terms when it determines the reasons for the disciplinary action no longer exist.

The act became effective May 18, 2001. (LA)

## **Sanitation Rules/Family Foster Homes Exempt**

S.L. 2001-109 (SB 541), as amended by S.L. 2001-487, Sec. 84(a) (HB 338, Sec. 84(a)). See **Children and Families**.

## **Amend State Veterans Home Act**

S.L. 2001-117 (HB 261). See **State Government**.

## **Civil Penalty Authority/Public Health Violations**

S.L. 2001-120 (HB 837). See **Local Government**.

## **State Mental Health Joint Security Force**

S.L. 2001-125 (SB 370) grants the Secretary of Health and Human Services the power to designate one or more special police officers at Cherry Hospital and Dorothea Dix Hospital. Within the territory of the hospital, these officers would have the same power as sheriffs. Within the county in which the hospital is located, they would have the power to retrieve clients and return them to the hospital and to arrest a person who commits a criminal offense within the territory of the hospital if the arrest is made during the person's immediate and continuous flight from the territory of the hospital.

The act became effective May 25, 2001. (JH)

## **Area Mental Health Background Check**

S.L. 2001-155 (HB 857) makes changes to the criminal history record check requirements for applicants for positions not requiring an occupational license as a condition for employment by a mental health, developmental disabilities, and substance abuse services area authority. The act allows counties that have adopted an appropriate ordinance and have access to the Division of Criminal Information (DCI) databanks to access the DCI databanks for the criminal history check in lieu of submitting the fingerprints to the Department of Justice. The check must be initiated within five days of the offer of employment. The act does not change the current requirements regarding conducting a national criminal history check for these applicants.

The act became effective May 31, 2001. (LA)

## **Cost Reports-Special Care Units**

S.L. 2001-157 (HB 958). See **Senior Citizens**.

## **Developmentally Disabled Group Homes Regulation**

S.L. 2001-209 (HB 387) transfers the regulation of group homes for developmentally disabled adults from Chapter 131D, regulating the inspection and licensing of facilities, to Chapter 122C, regulating mental health. Within twelve months of the effective date of this act, these homes will have to comply with building code requirements for smoke detectors. Those group homes that are currently licensed shall be deemed to have met the building code requirements for licensure as a supervised living facility for developmentally disabled adults under Chapter 122C. These homes will be required to comply either with categories of existing rules applicable to group homes for developmentally disabled adults under Chapter 131D or with categories of existing rules applicable under G.S. 122C at the option of the home. The Divisions of Facility Services and Mental Health, Developmental Disabilities, and Substance Abuse Services will designate these "categories of rules". Otherwise, these homes will be subject to licensure under Chapter 122C and to adverse action on a license for failure to comply with applicable statutes or rules. The act amends the State-County

Special Assistance statute to specify that an "adult care home" includes a supervised living facility for developmentally disabled adults licensed under Chapter 122C in order to ensure that the persons residing in group homes for developmentally disabled adults and formerly eligible for State-County Special Assistance will remain eligible. Conforming amendments are made to the long-term care insurance statute.

The act became effective June 15, 2001. (DJ)

## Regulation of Emergency Medical Services

S.L. 2001-210 (HB 453) amends the current law regulating ambulance services by expanding the scope of the regulation of emergency medical services in general, including any entity engaged in the business providing a continuum of out-of-hospital care for patients. The act also requires the North Carolina Medical Care Commission to adopt rules to establish standards and criteria for the denial, suspension, voluntary withdrawal, or revocation of credentials for trauma center designation.

Specifically, the act amends Article 7 of Chapter 131E, which regulates health care facilities, as follows:

- Adds several new definitions to G.S. 131E-155, to account for the various types of personnel that are typically involved in the provision of emergency services.
- Defines "emergency medical services" (EMS) to mean all services rendered in responding to improve the health and wellness of the community and to address the individual's need for emergency medical care within the scope of practice as defined by the North Carolina Medical Board in order to prevent loss of life or aggravation of physiological or psychological illness or injury.
- Extends the expiration date of an ambulance permit from one year to four years from the date of issuance.
- Allows the Department to credential EMS personnel instead of certifying them, including persons who are currently credentialed in other states or by a national credentialing agency and who are currently residing in North Carolina and seeking North Carolina credentialed status.

The act became effective January 1, 2002. (LA)

## Emergency Medical Services Act Update

S.L. 2001-220 (HB 452) updates the Emergency Medical Services (EMS) Act of 1973, and expands and consolidates rule-making authority to the North Carolina (NC) Medical Care Commission. The act encourages the integration of emergency medical services with public and community health care services and restructures the membership of the State EMS Advisory Council to be more representative of the current profile of the profession.

The act amends the EMS Act of 1973 to:

- Update the statute and to conform to the present-day and future needs of the State's EMS delivery system.
- Consolidate the rule making authority under the act to the NC Medical Care Commission by moving some authority that was vested with the NC Medical Board and the Commission for Health Services to the NC Medical Care Commission and to require the Board to adopt additional rules to implement the act as updated.
- Update the powers and duties of the Secretary of Health and Human Services to conform to the expanded scope of service delivery. For example, the act requires the Secretary to expand EMS services to include a system that is integrated with other health care providers and networks including public health, community health monitoring activities, and special needs populations.
- Restructure the membership of the State EMS Advisory Council to be more representative of the profession.

- Clarify that county governments are responsible for ensuring that EMS services are available to its citizens.
- Clarify that the NC Medical Board retains the authority to establish the scope of practice for credentialed EMS personnel, but that the NC Medical Care Commission has the rule making authority over EMS personnel.
- Protect the confidentiality of identifiable patient information consistent with current law that is collected and maintained by the Department or providers in connection with EMS or with the statewide trauma system.
- Create an Emergency Medical Services Disciplinary Committee to review disciplinary matters relating to the credentialing of EMS personnel and make recommendations to the Department.

The act became effective January 1, 2002. (LA)

## Amend Good Samaritan Law/Medical Care

S.L. 2001-230 (SB 160) recodifies G.S. 90-21.14(a1), regulating liability limitations under Article 1B, Medical Malpractice Actions of Chapter 90 Medicine, Allied Occupations as G.S. 90-21.16 and provides immunity from liability to licensed or certified volunteer medical and health care providers for ordinary negligence while providing services at free clinic facilities, in the same manner these providers are afforded immunity from liability when providing services at public health departments and community health centers. "Free clinic" is defined as a tax-exempt organization that provides health care services free of charge or at a minimum fee to cover administrative costs, and that maintains liability insurance covering its liability and the liability statutorily conveyed on the free clinic under this act. The act does not provide immunity to the free clinic from liability for lack of due care in the selection of the volunteer medical or health care provider or for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

The act became effective October 1, 2001. (LA)

## Controlled Substances Classification

S.L. 2001-233 (SB 543) amends the classification of certain controlled substances to make the North Carolina Controlled Substances Act (CSA) consistent with the federal classification of controlled substances. The act amends the classification of the controlled substances described below.

- **Dihydroetorphine:** Dihydroetorphine is an opiate-like substance that is not marketed or used medically in the United States. On November 17, 2000 this substance was added to Schedule II of the federal CSA. The act adds this substance to the list of Schedule II substances under North Carolina's CSA.
- **Dronabinol:** Dronabinol (manufactured name Marinol) is a hallucinogenic and is generally prescribed for the treatment of nausea and vomiting associated with cancer chemotherapy. Dronabinol was removed from Schedule II by the Drug Enforcement Agency (DEA) and placed into Schedule III of the Federal Controlled Substance Act. The act lowers Dronabinol to a Schedule III classification consistent with the federal law.
- **Ketamine:** Ketamine is a depressant and is marketed as a general anesthetic. Ketamine was placed in the federal CSA in Schedule III in August 1999. The act maintains the Schedule III classification but moves it under the heading of "Depressants".
- **Zaleplon:** Zaleplon is a central nervous system depressant that is marketed under the trade name Sonata for the short-term treatment of insomnia. Zaleplon was first

controlled by the DEA on January 27, 1999 as a Schedule IV substance. The act adds this substance to the statutory list of Schedule IV depressants.

- **Modafinil:** Modafinil is a central nervous system stimulant that is marketed under the name Provigil for the treatment of excessive daytime sleepiness associated with narcolepsy. It was first controlled by the DEA on September 15, 1999 as a Schedule IV substance. The act adds Modafinil to the statutory list of Schedule IV stimulants.

The act became effective June 21, 2001. (DJ)

## Certificate of Need-Adult Care Homes Regulated

S.L. 2001-234 (SB 937). See **Senior Citizens**.

## Amend Certificate of Need (CON)

S.L. 2001-242 (SB 714) amends the North Carolina ambulatory surgical facility licensure law and the North Carolina certificate of need law by amending the definition of an ambulatory surgical center from a facility with at least two operating rooms to a facility with at least one operating room. As a result, more ambulatory surgical facilities will become subject to North Carolina's Facility Licensure Act and to the CON requirement for the expansion, relocation, or the construction of new ambulatory care facilities. The act also amends the definition of the term "new institutional health service", which defines the scope of services that are subject to the CON requirements, to include within that definition the construction, development, establishment or increase in the number of operating rooms within the existing ambulatory surgical facility or on the same grounds where the existing facility is located, or relocation to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room(s) are currently located. The act does not require a CON to relocate an existing operating room or rooms within the same building or on the same grounds or across the street from the grounds where the operating room(s) are currently located. As a result of the act, no new ambulatory care facility may be constructed and no existing facility may expand the number of operating rooms without first obtaining a CON, even when the projected cost of the expansion or construction is less than \$2,000,000, which was allowable under prior law. To conform to the new provisions, the act repeals S.L. 2000-135, (HB 1184) that required a CON for the expansion or relocation of part or all of an ambulatory surgical center with more than one operating room and for the relocation and addition of part or all of a hospital operating room to a new building.

The act grandfathers in any project where construction of an ambulatory care operating room is underway on or before June 23, 2001, the capital expenditure or obligation exceeds \$50,000, and completion is expected by December 31, 2002.

The act became effective June 23, 2001. (LA)

## Amend Uniform Anatomical Gift Act

S.L. 2001-255 (SB 1075) amends the Uniform Anatomical Gift Act by adding tissue banks registered with the Food and Drug Administration to those tissue banks regulated under the act and by expanding the definition of a "qualified individual" to persons who are certified to enucleate eyes or perform in situ excision by an eye bank accredited by the Eye Bank Association of America. Further, technicians who have successfully completed a written examination administered by an eye bank that is registered with the Food and Drug Administration and accredited by the Eye Bank Association of America and who are otherwise certified as described above may perform eye enucleations or in situ excisions.

The act became effective June 29, 2001. (DJ)

## No Drugs at Child Care Centers

S.L. 2001-332 (SB 751). See **Criminal Law and Procedure**.

## Delivery of Medical Devices/Medical Equipment

S.L. 2001-339 (HB 437) specifies that any business engaging in dispensing devices or medical equipment, whether the business is located in North Carolina or not, must register with the Board of Pharmacy and obtain a permit if the devices or equipment are delivered to a user in this State. Pharmaceutical manufacturers registered with the Food and Drug Administration and their wholly owned subsidiaries are exempt from this requirement. Prior to enactment of this act, it was unclear whether out of state businesses had to register.

The act became effective August 3, 2001. (DJ)

## Dietetics/Nutrition Practice Act

S.L. 2001-342 (SB 157) amends Article 25 of Chapter 90, the Dietetics/Nutrition Practice Act, to authorize the Board of Dietetics/Nutrition to establish fees for services provided by the Board and increases fees for services for which the Board is currently required to adopt fees. The act deletes the current limitation that any fee adopted must be in an amount limited to the costs of providing the specific service. The below maximum allowable fees are increased:

<u>Description</u>	<u>Maximum Previous Fee</u>	<u>Maximum Enacted Fee</u>
Initial application	\$25.00	\$100.00
Examination/reexamination	\$150.00	\$200.00
Issuance of a license	\$100.00	\$200.00
License renewal	\$50.00	\$125.00
Late renewal of license	\$50.00	\$100.00
Provisional license	\$35.00	\$100.00

The act became effective October 1, 2001. (LA)

## Substance Abuse Professionals

S.L. 2001-370 (SB 1062) amends Article 5C of Chapter 90, the North Carolina Substance Abuse Professional Certification Act, by authorizing the North Carolina Substance Abuse Professional Certification Board to regulate requirements for registrants and to designate supervisors of individuals applying for registration or certification as substance abuse professionals. The act increases the maximum fees for various certifications and renewals, and apportions maximum fees for obtaining and renewing registration for registrants as follows:

<u>Description</u>	<u>Maximum Previous Fee</u>	<u>Maximum Enacted Fee</u>
Certificate as substance abuse counselor, Substance abuse prevention consultant, clinical supervisor, or residential facility director	\$325.00	\$475.00
Certificate Renewal	\$100.00	\$150.00

<b>Certificate as clinical addictions specialist pursuant to deemed status</b>	\$100.00	\$150.00
<b>Certificate Renewal</b>	\$50.00	\$100.00
<b>Certificate as clinical addictions specialist pursuant to all other procedures authorized by the Article</b>	\$325.00	\$475.00
<b>Certificate Renewal</b>	\$100.00	\$150.00
<b>Registration as a registrant</b>		\$150.00
<b>Registrant Renewal</b>		\$150.00
<b>Reexamination fee</b>	\$100.00	\$150.00
<b>Receipt of written verification of certification by Board</b>		\$25.00

The act amends the Board's grounds for disciplinary action by making the conviction of a Class A-E felony result in the immediate suspension of certification or registration for a minimum of one year. The act also requires all persons certified or registered under the provisions of this Article to provide notice to the Board within 60 business days of any change in his or her name or address. It further clarifies that the signature on the recommendation issued by a facility in lieu of a substance abuse assessment, must be the personal signature of the individual authorized to review the recommendation.

The act becomes effective April 1, 2002. (AC)

## **Criminal Record Check for Nurses**

S.L. 2001-371 (SB 195) requires the Board of Nursing to ensure that all initial applicants for licensure as a registered nurse or licensed practical nurse have their State and national criminal histories checked. The Board is authorized to deny licensure if the criminal history record check reveals one or more convictions of crimes that bear on the applicant's fitness for licensure, depending on the circumstances and other factors.

The act authorizes the Department of Justice to provide the results of any criminal background check at the request of the Board. The Board is required to keep the results confidential. In addition, the Department of Justice may charge a fee for the State and national checks.

The act amends the Nursing Practice Act to require all applicants to consent to a criminal history record check. The Board is authorized to deny licensure if the applicant refuses to consent. The Board submits the applicant's fingerprints to the Department of Justice for the conduction of the check. If the criminal history check reveals a conviction of one or more crimes that are enumerated in the act, the Board is authorized to deny licensure.

If the Board determines that licensure should be denied, the applicant may appeal the decision by appearing before the Board, and by doing so, the applicant shall be deemed as exhausting all administrative remedies under 150B of the Administrative Procedures Act.

The act also provides the Board and its officers and employees immunity from liability for denying licensure based on the criminal history record check.

The act became effective January 1, 2002. (LA)

## **Long-Term Care/Quality of Care**

S.L. 2001-385 (HB 1068). See **Senior Citizens**.

## Hospital Temporary Bed Increases

S.L. 2001-410 (HB 1147) permits hospitals to temporarily increase their bed capacity using observation beds, if the Division of Facility Services is notified and approves of the temporary increase. The temporary increase cannot exceed ten percent of the hospital's licensed bed capacity and cannot last longer than 60 days.

The act permits the Medical Care Commission to adopt temporary rules setting forth conditions for licensing all levels of neonatal care beds. Under current law, the Commission can adopt permanent rules regarding neonatal care beds. The act permits the Commission to expedite rulemaking for neonatal beds, but requires that prior to the adoption of any temporary rules, the Commission must:

- Publish the proposed temporary rule in the *North Carolina Register* for 30 days prior to adoption.
- Notify persons on its mailing list.
- Accept oral and written comments on the proposed temporary rules.
- Hold at least one public hearing.

The Commission must make permanent any temporary rules adopted pursuant to this act. The temporary rulemaking authority became effective September 14, 2001 and expires 180 days thereafter, or March 13, 2002.

The act amends G.S. 97-26(b) of the Workers' Compensation Act pertaining to hospital payments for treatment and services rendered to workers' compensation patients. Specifically, the Industrial Commission determines the fee a hospital charges for payment of medical treatment and services rendered to workers' compensation patients. Effective September 16, 2001, through June 30, 2002, the fees are the following amounts:

- Inpatient hospital services: fee is the amount that the hospital would have received for those services as of June 30, 2001. The payment will not be more than a maximum of 100% of the hospital's itemized charges as shown on the UB-92 claim form nor less than the minimum percentage for payment of inpatient Diagnostic Related Grouping (DRG) claims that was in effect as of June 30, 2001.
- Outpatient hospital services and any other services that were reimbursed as a discount off of charges under the State Health Plan as of June 30, 2001: The percentage applicable to each hospital is the percentage used by the Industrial Commission to determine outpatient rates for each hospital as of June 30, 2001.
- Other services: a reasonable fee determined by the Industrial Commission

The section of the act permitting hospital temporary increases in hospital bed capacity became effective November 1, 2001. The section of the act permitting the Medical Care Commission to adopt temporary rules became effective September 14, 2001 and expires 180 days from that date, or March 13, 2002. The changes to the worker's compensation statutes became effective September 15, 2001. (DJ)

## Governor Morehead School Staffing Changes

S.L. 2001-412 (HB 435) amends Chapter 143B to provide for the establishment of private, non-profit corporations to support the Governor Morehead School. The act authorizes the Department of Health and Human Services to provide staff assistance, office space, supplies and other related resources to support the services and programs offered by the new corporations, and likewise authorizes the Board of Directors of the Governor Morehead School to encourage the establishment and operation of the new corporations. The maximum 20 hour/month per employee restriction that currently applies to employees of the Department of Health and Human Services in such circumstances does not apply in this instance.

The act became effective September 14, 2001. (LA)



## **Utilization Review and Grievance Changes**

S.L. 2001-417 (HB 351). See **Insurance**.

## **Prescription Drug Assistance Program Management**

S.L. 2001-424, Sec. 21.3 (SB 1005, Sec. 21.3) directs the Department of Health and Human Services to implement various recommendations of the "North Carolina Medicaid Benefit Study", May 1, 2001 to improve management of all prescription drug assistance programs operated by the Department. The Department must consider implementing a prior authorization program, maximum allowable pricing, or contracting with a pharmacy benefits manager, and is required to increase the use of generic drugs and limit the dispensing of drugs to a 34-day supply. The Department is to report on its activities to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research division by January 1, 2002.

The act became effective July 1, 2001. (AC)

## **Coordination of Access to Pharmaceutical Company Prescription Drug Programs**

S.L. 2001-424, Sec. 21.6 (SB 1005, Sec. 21.6), as amended by S.L. 2001-513, Sec. 20 (HB 231, Sec. 20) directs the Department of Health and Human Services to utilize funds each year of the biennium to initiate the development of a system to assist eligible individuals in obtaining prescription drugs at no cost through pharmaceutical company programs. The system will be designed to minimize the efforts of patients and health care providers in securing needed drugs. The Department is to report on the coordination of access by January 1, 2002, April 1, 2002, and October 1, 2002, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

The act became effective July 1, 2001. (AC)

## **HIV/AIDS Prevention Initiative**

S.L. 2001-424, Sec. 21.18D (SB 1005, Sec. 21.18D) directs the Department of Health and Human Services to focus its current resources and to coordinate efforts to enhance HIV/AIDS awareness, education, and outreach with various State agencies, faith communities, and nonprofit agencies. The Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention and the Department of Administration are to ensure the incorporation of developmentally appropriate HIV/AIDS education and outreach information into their current programs and services to strengthen and enhance HIV/AIDS prevention and intervention programs. The Department must report on its implementation to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Subcommittee on Health and Human Services, and the Fiscal Research Division on March 15, 2002.

The act became effective July 1, 2001. (AC)

## **Medicaid Program**

S.L. 2001-424, Sec. 21.19 (SB 1005, Sec. 21.19) makes the following changes to the North Carolina Medicaid Program:

- Reduces the dispensing fee for prescription drugs from \$5.60 to \$4.00 per brand name prescription. The dispensing fee for generic drugs is \$5.60;
- Increases co-payments for brand name prescription drugs from \$1.00 to \$3.00 per prescription. Co-payments for generic drugs remain at \$1.00 per prescription;
- Applies federal transfer of asset policies to income producing property under Title XIX; and
- Increases the substitution of generic drugs for brand name drugs unless brand name drug is medically necessary.

The section that applies federal transfer of asset policies to income producing property under Title XIX becomes effective no earlier than October 1, 2001. The remainder of the section became effective July 1, 2001. (LA)

## **Medical Coverage Policy under State Medicaid Program Exempt from Rule Making Under the APA**

S.L. 2001-424, Sec. 21.20 (SB 1005, Sec. 21.20) exempts new or amended medical coverage policies under the State Medicaid Program, as adopted by the Department of Health and Human Services, from the rule-making requirements of Chapter 150B, the Administrative Procedure Act. The act also establishes procedure for the development and adoption of medical coverage policy by the Department.

The act became effective July 1, 2001. (AC)

## **NC Health Choice**

S.L. 2001-424, Sec. 21.22 (SB 1005, Sec. 21.22) eliminates the two-month waiting period for all children eligible for the NC Health Choice Program. Funding for the Program is limited to the state appropriations provided in each year of the biennium.

The act became effective July 1, 2001. (AC)

## **Medicaid Cost-Containment and Growth Reduction**

S.L. 2001-424, Sec. 21.24 (SB 1005, Sec. 21.24) directs the Department of Health and Human Services to implement a plan to reduce the rate of growth of the Medicaid Program during fiscal year 2002-2003 to eight percent (8%) or less of the total expenditures for payments for medical services for fiscal year 2001-2002, excluding the rate of growth associated with eligibles. The Department is to submit a report on its plans to reduce the rate of growth in the State Medicaid Program to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by December 1, 2001. Prior to making any change in medical policy affecting the amount, sufficiency, duration, or scope of services provided under Medicaid, the Division of Medical Assistance is to prepare a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and must submit it for departmental review.

The act became effective July 1, 2001. (AC)

## **Medicaid Cost-Containment Activities**

S.L. 2001-424, Sec. 21.25 (SB 1005, Sec. 21.25) authorizes the Department of Health and Human Services to use up to three million dollars (\$3,000,000) of Medicaid funds budgeted for program services to support the cost of administrative activities that will help contain the cost of the Medicaid Program, including contracting for services or hiring additional staff. The cost containment

activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization, medical necessity reviews, revised medical necessity criteria, and service provision in the least costly settings. The Department must submit a proposal for any expenditure to the Office of State Budget and Management for approval before any funds are expended. The Department must provide a copy of any proposal to the Fiscal Research Division.

The act became effective July 1, 2001. (AC)

## **Medicaid Program Management**

S.L. 2001-424, Sec. 21.26 (SB 1005, Sec. 21.26) directs the Department of Health and Human Services to improve the management of the Medicaid Program and consider the findings and recommendations in the "NC Medicaid Benefit Study". The act requires the Department to implement a pharmacy management plan to achieve anticipated savings and specifies activities for the Department to consider in the development of this plan. The Department is to report on all of its activities to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 1, 2002.

The act became effective July 1, 2001. (AC)

## **Carolina Access Program Improvements**

S.L. 2001-424, Sec. 21.27 (SB 1005, Sec. 21.27) directs the Department of Health and Human Services to improve the effectiveness and efficiency of the Carolina ACCESS Program, Medicaid's primary care case management program.

The act became effective July 1, 2001. (AC)

## **Study Optional Services Under Medicaid Program**

S.L. 2001-424, Sec. 21.28 (SB 1005, Sec. 21.28) directs the Department of Health and Human Services to study all optional Medicaid services by considering the cost containment achieved by reduction in or elimination of the service, and the impact the reduction or elimination will have on client needs and other services. The Department must report its findings to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by April 1, 2002.

The act became effective July 1, 2001. (AC)

## **TBI Medicaid Waiver**

S.L. 2001-424, Sec. 21.28A (SB 1005, Sec. 21.28A) directs the Department of Health and Human Services to develop and seek a waiver for a Community Alternatives Program for individuals with traumatic brain injury. The General Assembly must approve implementation of the waiver and funds must be appropriated. The Department must report the status of the waiver to the House of Representative Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services on December 1, 2001, and March 1, 2002.

The act became effective July 1, 2001. (AC)

## **Adult Care Home Model for Community-Based Services**

S.L. 2001-424, Sec. 21.54 (SB 1005, Sec. 21.54) directs the Department of Health and Human Services to develop a model project for delivering community-based mental health, developmental disabilities, and substance abuse housing and services through adult care homes that have excess capacity. The Department is to submit a progress report on the model to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before January 1, 2002 and a final report on March 1, 2002.

The act became effective July 1, 2001. (AC)

## **Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs**

S.L. 2001-424, Sec. 21.58 (SB 1005, Sec. 21.58) establishes a Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to be used to supplement existing State funds and local funding available to meet the mental health, developmental disabilities, and substance abuse services needs of the State. The State Treasurer is the custodian of the trust fund. Moneys in the trust fund may be used to:

- Enhance community based services and facilitate compliance with the federal Supreme Court decision in Olmstead.
- Bridge funding to provide services to clients during transitional periods such as the closing of state facilities.
- Construct, repair and renovate state facilities.

The Secretary of the Department of Health and Human Services shall develop a plan for the use of funds from the trust fund. The plan shall be consistent with the plan developed pursuant to G.S. 122C-102 as passed in S.L. 2001-437. Funds shall not be transferred from the trust fund until the Secretary has consulted with the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Chairs of the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services.

The act became effective July 1, 2001. (AC)

## **Whitaker School**

S.L. 2001-424, Sec. 21.61 (SB 1005, Sec. 21.61) directs the Department of Health and Human Services to work with families and guardians and various state and local agencies to develop a plan for the transition of children from the Whitaker School to their homes or alternative facilities. The Department shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on April 1, 2002 and on October 1, 2002.

The act became effective July 1, 2001. (AC)

## **Mental Retardation Center Transition Plan**

S.L. 2001-424, Sec. 21.62 (SB 1005, Sec. 21.62) directs the Department of Health and Human Services to develop and implement a plan for the transfer of residents in the State's five mental retardation centers, if appropriate, to private intermediate care facilities if they need

institutional services or to community programs and services if they may be appropriately served in the community. The Department may use funds from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to facilitate the transition of residents into alternative community-based services. The Department shall report on its progress to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 1, 2002, May 1, 2002, and May 1, 2003. Before closing one or more State mental retardation centers, the Department must first report the closure to the Joint Legislative Commission on Governmental Operations.

The act became effective July 1, 2001. (AC)

## **Dorothea Dix Hospital**

S.L. 2001-424, Sec. 21.63 (SB 1005, Sec. 21.63) directs the Department of Health and Human Services to develop and implement a plan for the construction of a replacement facility for Dorothea Dix Hospital, and for the transition of patients to the new facility, to the community, or to other long-term care facilities, as appropriate. The act directs the Department to conduct an analysis of the individual patient service needs and develop and implement an individual transition plan for each patient in the hospital. The transition plans must take into consideration the availability of appropriate alternative placements and the needs of the patient. Any nonrecurring savings in State appropriations that result from reductions in beds or services shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. The act directs the Secretary, in consultation with the Department of Administration and the Department of the State Treasurer, to develop financing options for the construction of a psychiatric hospital to replace Dorothea Dix Hospital. The Department must provide progress reports regarding the financing plan to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on December 1, 2001 and April 1, 2002. The Department must submit a report on implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on February 1, 2002 and May 1, 2002.

The act became effective July 1, 2001. (AC)

## **Reduce Administrative Costs of Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities**

S.L. 2001-424, Sec. 21.65 (SB 1005, Sec. 21.65) directs area mental health authorities or counties administering local mental health services to develop and implement plans to reduce local administrative costs so as not to exceed fifteen percent (15%) in fiscal year 2001-2002 and thirteen percent (13%) in fiscal year 2002-2003. The plans are to be developed in accordance with guidelines adopted by the Secretary of the Department of Health and Human Services. The Department shall report its progress to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 1, 2002 and April 15, 2002.

The act became effective July 1, 2001. (AC)

## Services to Multiply-Diagnosed Adults

S.L. 2001-424, Sec. 21.66 (SB 1005, Sec. 21.66) directs the Division of Mental Health, Developmental Disabilities and Substance Abuse Services within the Department of Health and Human Services to implement guiding principles for the provision of services to multiply-diagnosed adults, to provide those treatment services that are medically necessary, and to implement utilization review of services provided. The section further directs the Department to implement the following cost-reductions strategies: preauthorization for all services except emergency services, criteria for determining medical necessity, clinically appropriate services, and conducting a State review of individualized service plans for certain former Thomas S. class members and of staffing patterns of residential services. The section also prohibits the use of State funds to purchase single-family or other residential dwellings to house multiply-diagnosed adults.

The Department must submit a progress report on implementation of this section not later than February 1, 2001 and a final report not later than May 1, 2002, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

The act became effective July 1, 2001. (DJ)

## Downsizing of Mental Retardation Centers

S.L. 2001-424, Sec. 21.67 (SB 1005, Sec. 21.67) directs the Department of Health and Human Services to develop and implement cost containment and reduction strategies to ensure financial and staff downsizing of the State's regional mental retardation centers by four percent (4%) each year. Admissions to the State's intermediate care facilities for the mentally retarded (ICF-MR) will only be made as a last resort and only with approval of the Department. Clients needing ICF-MR level of care will be placed in non-State facilities.

Any savings in State appropriations in excess of \$2,900,000 in each year of the 2001-2003 biennium shall be dispersed as follows:

- Nonrecurring savings shall be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs.
- Recurring savings shall be retained by the Department to support the recurring costs of additional community-based placements from Division facilities in accordance with the Olmstead Decision.

The Department shall report to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 15, 2002 and May 1, 2002.

The act became effective July 1, 2001. (AC)

## State Psychiatric Hospitals Bed Allocation Plan

S.L. 2001-424, Sec. 21.68A (SB 1005, Sec. 21.68A) directs the Department of Health and Human Services to develop and implement a plan that provides for the allocation of state psychiatric hospital beds to counties served by the State's regional psychiatric hospitals. The Department shall report to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on March 1, 2002.

The act became effective July 1, 2001. (AC)

## **AIDS Drug Assistance Program (ADAP)**

S.L. 2001-424, Sec. 21.90 (SB 1005, Sec. 21.90) directs the Department of Health and Human Services to develop a comprehensive information management system on AIDS/HIV clients receiving services from the State, patterned after the information management system used by the Prescription Drug Assistance Program. The act further directs the Department to develop a plan for promoting patient adherence to physician treatment recommendation. The Department shall report on this plan to members of the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by May 1, 2002.

After the Office of State Budget and Management certifies that the Department has developed an information management system, eligibility for participation in ADAP may be extended to individuals with incomes up to one hundred fifty percent (150%) of the federal poverty level, and to individuals with incomes up to one hundred seventy-five percent (175%) of the federal poverty level after six months of the initial increase.

The act directs the Department to make an interim report on ADAP program utilization by January 1, 2002, with a final report and a report on the findings from a study on ways to improve HIV/AIDS prevention and care programs by April 30, 2002, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

The act became effective July 1, 2001. (AC)

## **Access to Oral Health Care**

S.L. 2001-424, Sec. 21.98 (SB 1005, Sec. 21.98) directs the appropriation of funding to the Department of Health and Human Services to develop and implement a plan to improve access to dental health services for Medicaid eligible children and adults. The funds allocated in this section may not be used to pay attorneys' fees in the settlement of the case of Andrican et al. v. Buell et al.

The act became effective July 1, 2001. (AC)

## **Prescription Drug Initiatives Grant Funds**

S.L. 2001-424, Sec. 21.100 (SB 1005, Sec. 21.100) directs the Health and Wellness Trust Fund Commission to develop criteria for awarding grants that will enable programs and initiatives addressing access to prescription drugs to seniors and disabled citizens, to receive grants from the fund. The act directs the chair of the Health and Wellness Trust Fund Commission to report on these programs and initiatives in the Commission's annual report to the Joint Legislative Commission on Governmental Operations and to the chairs of the Joint Legislative Health Care Oversight Committee.

The act became effective July 1, 2001. (AC)

## **Mental Health System Reform**

S.L. 2001-437 (HB 381), as amended by S.L. 2001-487, Sec. 79.5, Sec. 80(a), and Sec. 90.5 (HB 338, Sec. 79.5, Sec. 80(a), and Sec. 90.5) amends the mental health statutes regarding systems delivery to provide counties an alternative to establishing area authorities while ensuring the provision of public mental health, developmentally disabled, and substance abuse (MH/DD/SA) services to consumers. Counties are authorized to withdraw from existing area authorities and to ensure the delivery of public MH/DD/SA services through a single county program or jointly with one or more counties through a joint agency established pursuant to the terms of an interlocal agreement.

Other elements of the act include:

- Several new or amended provisions designed to enhance accountability and cooperation between boards of county commissioners, area authorities, and the Department of Health and Human Services(DHHS);
- Requirements to develop a 'business plan' to guide the management and delivery of public services at the local level and State level;
- Requirements for the universal availability of core services (including 'front-end' services such as screening, assessment, and emergency triage, and 'indirect services' such as prevention, education, and consultation at the community level) within available State and local resources;
- Enhanced powers and duties of local and State governing structures relating to quality assurance and accountability at the State and local levels;
- Establishment of a consumer advocacy program to operate at the State and local levels and to coordinate their functions with local consumer groups;
- Directives to DHHS to implement a certification process and to follow specific procedures to prepare for the reforms provided for in the legislation;
- Directives to the Secretary of DHHS to establish schedules for implementing a phased-in plan to eliminate disparities in the allocation of State funding across county programs and area authorities;
- A requirement that prior to requesting approval to close a State facility, the Secretary shall notify the Joint Legislative Commission on Governmental Operations and the Joint Legislative Committee on MH/DD/SAS and the members of the General Assembly who represent catchment areas affected by the closure and shall present a plan for the closure that addresses how patients will be cared for after the closure, how support services to community-based agencies and outreach services will be continued, and the impact on remaining facilities; and
- New limitations on the authority of the Secretary to close a State facility.

Sections 1.1 through 1.21(b) pertaining to governance changes, and Section 2 pertaining to the MH/DD/SA Consumer Advocacy Program (if funds are appropriated by the General Assembly in 2002) become effective July 1, 2002; and the remainder of the act became effective October 15, 2001. See **Studies Section** below for further provisions in this act. (LA)

## Immunity/Honoring Portable DNR Order

S.L. 2001-445 (SB 703) establishes a procedure for physicians to issue portable do not resuscitate (DNR) orders for patients. The act allows a physician to issue a portable DNR order, in a form developed by the Department of Health and Human Services, with the consent of the patient, the patient's parent if the patient is a minor, or the patient's representative if the patient is not a minor but is incapable of making an informed decision.

It also provides immunity from criminal prosecution, civil liability or disciplinary action to any physician or health care provider when honoring portable DNR orders. A health care provider may not be held liable for honoring a DNR order issued pursuant to this act as long as there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and the provider has no actual knowledge that the DNR order has been revoked. The act further clarifies that a health care provider may not be held liable for failure to follow a DNR order if the provider had no actual knowledge of the order's existence.

The act became effective December 1, 2001. (AC)

## Managed Care Patients' Bill of Rights

S.L. 2001-446 (SB 199). See **Insurance**.



## Advance Health Care Directives Registry

S.L. 2001-455 (HB 1362) requires the Secretary of State to establish and maintain a central database of voluntarily submitted advance health care directives and revocations of those directives. The registry is only accessible over the Internet. Only the person who executes one of the following documents or revocations of those documents may submit the document to the Secretary for filing in the registry:

- A health care power of attorney.
- A declaration of a desire for a natural death (i.e. living will).
- An advance instruction for mental health treatment.
- A declaration of an anatomical gift.

Upon submission of the document and payment of a filing fee of \$10.00, the Secretary will create a digital reproduction of the document and enter the reproduced document into the registry database. If a revocation is submitted, the Secretary will delete the revoked document from the registry. Once a document is entered into the database, the Secretary will return the original document and a card containing the document's file number and password to the person who submitted the document. A filing fee will not be required for revocations of documents. The revenue collected will be used to maintain and promote the existence of the registry.

The act also increases the maximum fee charged by the North Carolina Respiratory Care Board for examination or reexamination for applicants for licensure from \$150.00 to \$200.00.

The sections of the act establishing an Advance Health Care Directives Registry became effective January 1, 2002, and the section that changes fees charged by the North Carolina Respiratory Care Board became effective October 29, 2001. (DJ)

## Criminal Record Check Change/Long-Term Care

S.L. 2001-465 (SB 826). See **Senior Citizens**.

## Biological Agents Registry

S.L. 2001-469 (HB 1472). See **Anti-Terrorism**.

## Organ, Eye, and Tissue Donor Registry

S.L. 2001-481 (SB 907) amends the Uniform Anatomical Gift Act to clarify that a gift made in accordance with the statutes is sufficient legal authority for procurement and no additional authority from the donor or the donor's family is required. It also amends the act to make it clear that if prior to death a person has made an anatomical gift in the manner set forth in the statutes, the gift cannot be revoked, and no one can refuse to honor the gift. The act does not change the right of the donee not to accept an anatomical gift. The act requires DMV to make donor cards available to persons at drivers' license offices.

The act became effective January 1, 2002. See **Studies Section** below for further provisions in this act. (DJ)

## Enteral Sedation/Dentist Permits

S.L. 2001-511 (SB 772) authorizes the North Carolina Board of Dental Examiners to establish regulatory standards for the administration and monitoring of enteral sedation for outpatients in the dental setting in addition to existing standards for general anesthesia and parenteral sedation. The scope of the current statute is limited to sedation medication administered by inhalants or into the

blood through a vein. "Enteral sedation" includes medications absorbed through the intestinal tract. The act also clarifies that the Board's authority under this statute does not extend to oral premedication administered for minimal sedation.

The act became effective January 1, 2002. (LA)

## **Human Services**

### **Cabarrus Work Over Welfare**

S.L. 2001-354 (SB 113), as amended by S.L. 2001-487, Sec. 99 (HB 338, Sec. 99) amends Cabarrus County's workforce "pilot" program, first authorized by the General Assembly in its 1995 session and extends the program. The act changes the Cabarrus program as it relates to grant diversions for childcare and transportation, job bonuses, and evaluation for Medicaid so that the Cabarrus program is now like the State's Work First Program. The act also provides additional flexibility to Cabarrus County in the area of sanctions for noncompliance, disqualification for benefits, exemptions, and diversion assistance. The act requires the Department of Health and Human Services to report to the General Assembly and to the Joint Legislative Public Assistance Commission on or before September 1, 2002.

The act became effective August 10, 2001. (DJ)

### **Eliminate Joint Legislative Public Assistance Commission**

S.L. 2001-424, Sec. 21.13 (SB 1005, Sec. 21.13) repeals G.S. 120-225 that established the Joint Legislative Public Assistance Commission in 1997.

The act became effective July 1, 2001. (LA)

### **County Health and Human Services Budget Guidance**

S.L. 2001-424, Sec. 21.16 (SB 1005, Sec. 21.16) amends G.S. 108A-88, which prior to the enactment of this act, required the Secretary of the Department of Health and Human Services to annually provide each county director of social services with a report of the amount of State and federal moneys estimated to be available to pay for public assistance programs and other social services and the administrative costs related to such services; the percentage each county is expected to budget for the succeeding year; and in odd-number years, any changes in funding, formulas or programs related to these services which are proposed by the Governor; and any changes in the proposed budget made by the General Assembly or the United State Congress. The act amends this statute to require the Secretary to make such reports to not just every director of social services, but also to every county commissioner, county manager and director of public health. The act also expands the scope of the report to include information relative to public health services and related administrative costs.

The act became effective July 1, 2001. (LA)

### **Repeal Recipient Identification System**

S.L. 2001-424, Sec. 21.52 (SB 1005, Sec. 21.52) repeals G.S. 108A-25.1 which directed the Department of Health and Human Services to establish and maintain a uniform biometric identification system throughout the State to identify all Work First, food stamp and medical assistance program applicants and recipients. It also makes a conforming change by repealing G.S. 108A-24(1a) which defined the term, "biometric."

The act became effective July 1, 2001. (LA)

## **Evaluation of Early Intervention System**

S.L. 2001-424, Sec. 21.85 (SB 1005, Sec. 21.85) directs the Department of Health and Human Services (DHHS), Division of Public Health to determine the reasons why children are waiting for evaluation services provided by the Developmental Evaluation Centers and for services that follow the evaluation process and to develop a plan to reduce the waiting periods. The section also directs DHHS to assess ways to create efficiencies among therapies that are provided in early intervention programs and ways to combine early intervention services. Not later than December 1, 2001, DHHS was to have provided a report on its assessment and plans of action to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. DHHS must present a final report on the implementation of this section not later than April 1, 2002.

The act became effective July 1, 2001. (DJ)

## **Adolescent Pregnancy Prevention Initiatives**

S.L. 2001-424, Sec. 21.89 (SB 1005, Sec. 21.89) repeals G.S. 130A-131.15, which authorized the Department of Health and Human Services (DHHS) to establish and administer an Adolescent Pregnancy Prevention Program, and replaces it with a new G.S. 130A-131.15A, which authorizes DHHS to establish and administer Teen Pregnancy Prevention Initiatives for primary prevention, secondary prevention, and special projects. The new provision directs DHHS to target counties with the highest teen pregnancy rates, increasingly higher rates, high rates within demographic subgroups, or greatest need for parenting programs. Initiatives will be funded on a four-year funding cycle. Administrative costs in implementing the Teen Pregnancy Prevention Initiatives may not exceed ten percent (10%) of the total funds administered. DHHS may not require programs to provide a cash match, but may require an in-kind match.

The act became effective July 1, 2001. (DJ)

## **Intensive Home Visiting Program**

S.L. 2001-424, Sec. 21.97 (SB 1005, Sec. 21.97), prohibits the Division of Public Health within the Department of Health and Human Services from using any State funds for the 2001-2002 fiscal year to contract for evaluation or technical assistance for the Intensive Home Visiting Program, and if the Department contracts for this type of assistance using funds other than State funds, the contract must contain certain implementation and reporting deadlines as described in the section.

The section also requires the Division to collect certain data on Intensive Home Visiting Program participants as a condition of participation and must report by April 1, 2002 to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Appropriations Subcommittee on Health and Human Services on certain information from the collected data.

The act became effective July 1, 2001. (DJ)

## **Major Pending Legislation**

### **License by Credentials/Dentistry**

Senate Bill 861 authorizes the North Carolina Board of Dental Examiners (Board) to:

- Issue NC licenses to dentists and dental hygienists who hold out-of-state licenses and who meet certain statutory requirements and the Board's approval to actively practice in this State. (Expires July 1, 2003.)
- Issue "Limited Volunteer Licenses" to applicants that meet the Board's approval to practice dentistry, without compensation, in non-profit health care facilities serving low-income populations.
- Issue instructor's licenses to dentists who are not otherwise licensed in this State but who meet the Board's approval to practice in or on behalf of a dental school or academic medical center or teaching hospital.

The bill also:

- Amends current law governing dental hygiene licensure by requiring all applicants for licensure to have passed the National Board Exam in dental hygiene prior to taking the licensure examination offered by the NC Board of Dentistry. The bill also allows applicants who have graduated from a non-accredited dental hygiene program in the US military and who have practiced dental hygiene for at least five years and who are in good standing, to take the licensure examination offered by the Board if the applicant has passed the National Board Exam. (Expires July 1, 2003.)
- Provides that a prerequisite to taking the NC licensure examination is to have passed the National Board Exam in dental hygiene. (Expires July 1, 2003.)

The bill is currently pending in the House Health Committee. (LA)

## Studies

### Legislative Research Commission

#### The 2001 Studies Bill

S.L. 2001-491, Sec. 2.1(4) (d-e; i) (SB 166, Sec. 2.1(4) (d-e; i)) authorizes the Legislative Research Commission to study:

- State medical examiner system.
- Naturopathy.
- Impact of licensure and reimbursement requirements for licensed psychological associates on health care and on these practitioners.

This section became effective December 19, 2001. (AC)

### New/Independent Studies/Commissions

#### Commission on Positive Racial, Ethnic, and Faith Relations

S.L. 2001-491, Secs. 6.1-6.7 (SB 166, Secs. 6.1-6.7) creates the Commission on Positive Racial, Ethnic, and Faith Relations and authorizes the Commission to examine the factors and beliefs that influence the formation of damaging attitudes and intolerance towards persons based on race, ethnicity, and faith and to seek ideas for changing false perceptions and building tolerance and acceptance. The Commission will submit an interim report to the General Assembly no later than the convening of the 2002 Regular Session of the 2001 General Assembly. A final report will be submitted to the General Assembly December 1, 2002.

These sections became effective December 19, 2001. (AC)

## **Referrals to Existing Commissions/Committees**

### **Joint Legislative Health Care Oversight Committee**

S.L. 2001-491, Secs. 10.1-10.5 (SB 166, Secs. 10.1-10.5) authorizes the Joint Legislative Health Care Oversight Committee to study:

- Delivery of medical services to persons with disabilities.
- Various issues relating to prescription drugs including the increasing costs of prescription drugs and approaches to controlling these costs.
- The county share of the cost of Medicaid.
- Workforce issues pertaining to the long-term care aide workforce.

The Joint Legislative Health Care Oversight Committee may report findings to the 2002 Regular Session of the 2001 General Assembly or to the 2003 General Assembly.

These sections became effective December 19, 2001. (AC)

### **Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services**

S.L. 2001-491, Secs. 19.1-19.2 (SB 166, Secs. 19.1-19.2) authorizes the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to study controlled substance analogues used as "date rape drugs" and determine whether those analogues should be added to the schedules for controlled substances. The Commission may report its findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services prior to the convening of the 2003 General Assembly.

These sections became effective December 19, 2001. (AC)

### **Public Health Study Commission**

S.L. 2001-491, Secs. 28.1-28.4 (SB 166, Secs. 28.1-28.4) authorizes the Public Health Study Commission to study:

- The public impact of Hepatitis C and the need for programs or policies to enhance education, awareness, detection, and prevention.
- Ways to improve HIV/AIDS prevention and care programs.
- State law and public policy pertaining to the treatment of rape victims and needle stick health care workers who risk HIV infection.

The Commission may report findings to the 2002 Regular Session of the 2001 General Assembly or to the 2003 General Assembly.

These sections became effective December 19, 2001. (AC)

## **Referrals to Departments, Agencies, Etc.**

### **Database on Psychotropic Meds/Children**

S.L. 2001-124 (SB 542) directs the Department of Health and Human Services to review the feasibility of establishing a statewide database containing information on the prescription and administration of psychotropic medications to children who receive State services and report its findings and recommendations to the Joint Legislative Health Care Oversight Committee and to the

Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, not later than January 1, 2002.

The act became effective May 25, 2001. (DJ)

## **Mental Health System Reform**

S.L. 2001-437 (HB 381) directs the Secretary of the Department of Health and Human Services (DHHS) to study consolidating the Quality of Care Consumer Advocacy Program established in the act with other consumer advocacy or ombudsman programs in DHHS. The Secretary will report the findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by March 1, 2002.

The act directs the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services to conduct an in-depth review of the current methods of and disparities in the allocation of State funding to area authorities and county programs for mental health, developmental disabilities, and substance abuse services and shall recommend changes to ensure equitable allocation of funds. The Committee will report its findings to the General Assembly, House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by May 1, 2002.

The act became effective October 15, 2001. (AC)

## **Organ, Eye, and Tissue Donor Registry**

S.L. 2001-481 (SB 907) requires the Department of Health and Human Services (DHHS), in consultation with the Department of Transportation, the Office of the Secretary of State, and federally designated organ, eye, and tissue procurement organizations and tissue banks to study the establishment of a statewide organ, eye, and tissue donor registry. The purpose of the study is to determine the feasibility and potential benefits of maintaining a statewide registry in order to expedite the identification of potential organ, eye, and tissue donors.

DHHS shall report its finding to the Joint Legislative Health Care Oversight Committee by May 1, 2002.

The act became effective December 6, 2001. (DJ)

## **The 2001 Studies Bill**

S.L. 2001-491, Sec. 23.1 (SB 166, Sec. 23.1) authorizes the Department of Health and Human Services (DHHS) to study disparities among ethnic and racial minorities in the health care system and ways to eliminate those disparities. DHHS may report to the 2002 Regular Session of the 2001 General Assembly and must report to the 2003 General Assembly on its recommendations.

This section became effective December 19, 2001. (AC)

## Chapter 13

### Insurance

Linda Attarian (LA), Frank Folger (FF), Trina Griffin (TG)  
and others (See references by initials on page 269 of this publication.)

## Enacted Legislation

### Life and Health Insurance

#### HMO Cease and Desist

S.L. 2001-5 (SB 168) expands the Insurance Commissioner's authority to issue an order to an HMO to cease and desist from engaging in an act or practice that violates any provision of law enforceable by the Department of Insurance and which expressly applies to HMOs. Under prior law, the Commissioner's scope of authority to issue such an order to an HMO was limited.

The act became effective March 22, 2001. (LA)

#### Health Insurance/Colorectal Cancer Screening

S.L. 2001-116 (SB 132) requires insurers, health benefit plans, and hospital or medical service corporations regulated by the Department of Insurance to provide coverage of colorectal cancer screenings for nonsymptomatic covered persons age 50 or older and covered persons who are less than 50 years old and at high risk for colorectal cancer. The coverage must be in accordance with guidelines published by the American Cancer Society and by the North Carolina Advisory Committee on Cancer Coordination and Control. The act provides that in circumstances where no appropriate participating provider is available to perform the screening, the health plan must provide a referral to an appropriate out-of-network provider at no additional cost to the covered person. Otherwise, the same deductibles, coinsurance and other limitations in the covered person's policy or plan that apply to similar benefits will apply to the colorectal screening.

The act became effective January 1, 2002, and applies to all health benefit plans that are delivered, issued for delivery, or renewed on or after that date. (LA)

#### Uniform Provider Credentialing

S.L. 2001-172 (HB 1160) establishes a uniform application for provider credentialing by health benefit plans. The act directs the Commissioner of Insurance to adopt, and update as necessary, a uniform provider credentialing application form with the information necessary to adequately assess and verify the qualifications of a licensed health care practitioner or applicant for licensure as a health care practitioner. It requires an insurer that provides a health benefit plan and credentials providers for its networks to maintain a process for assessing and verifying these qualifications within 60 days of receipt of the completed uniform application; and it prohibits such an insurer from requiring an applicant to submit information not required by the uniform application.

The act became effective October 1, 2001. (FF)

## Teachers' and State Employees' Benefits (State Health Plan)

S.L. 2001-253 (SB 824). See **Employment**.

## Health Insurance: Licensed Professional Counselor

S.L. 2001-297 (HB 593) amends G.S. 58-50-30 to prohibit insurers, health benefit plans, and hospital or medical service corporations regulated by the Department of Insurance from denying payment or reimbursement for any covered service performed by a licensed professional counselor and is within the scope of practice of a licensed professional counselor.

The act became effective October 1, 2001, and applies to claims for payment or reimbursement for services rendered on or after that date. (LA)

## Health Insurance Omnibus Changes

S.L. 2001-334 (HB 360), as amended by S.L. 2001-487, Sec. 106 (HB 338, Sec. 106) amends a variety of provisions in Chapter 58 of the General Statutes governing health insurance to:

- Clarify that insurers, self-insurers, service corporations, HMOs, and MEWAs cannot make any condition in their insurance contracts concerning the court or jurisdiction in which a suit on the contract may be brought. This part became effective October 1, 2001.
- Delete references to the use of utilization review or quality management programs as part of the definition of "preferred provider benefit plan" and "health benefit plan". This part became effective October 1, 2001.
- Modify the small employer rate guarantee law by prohibiting a small employer carrier from modifying the premium rate charged to a small employer group member during a 12-month period as a result of the increasing age of a group member. This part became effective October 1, 2001.
- Provide a limited exception to the requirement that insurance policies addressing intoxicants and narcotics contain the following provision: "Except for the payment of benefits for the necessary care and treatment of chemical dependency as provided by law, the insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician." The act makes this provision inapplicable to an accident or health insurance policy that provides hospital, medical, or surgical expense coverage. This part became effective October 1, 2001.
- Expand the law on newborn and foster care coverage to specifically include adopted children in its scope and to require health benefit plans to provide coverage to a newborn, foster child, and adopted child without requirements for prior notification unless an additional premium is due. If an additional premium is due, the plan must cover the child if the child is enrolled within 30 days of the birth of the child, placement in the foster home, or placement for adoption, as applicable. This part became effective October 1, 2001.
- Amend the law for commercial insurers to conform to the HMO law regarding replacement coverage by prohibiting an insurer from implementing replacement rules that allow a delay in the effective date of coverage for an insured with regard to active employment, confinement to a hospital, or pregnancy. This part became effective October 1, 2001.
- Provide that a person who elects continuation coverage do so for a period of not fewer than 60 days after the date of termination or eligibility from the prior plan. This provision is identical to that provided by COBRA. This part became effective October 1, 2001.



- Require HMOs that provide group coverage to provide 45 days' notice for premium changes. This part became effective October 1, 2001.
- Amend the HIPAA provisions to prohibit a group health insurer from imposing a preexisting condition exclusion under successor health care coverage for a condition for which medical advice, diagnosis, care or treatment was recommended or received for the first time while the covered person was previously covered, provided that the previous coverage was continuous to a date not more than 63 days before the enrollment date for new coverage. This part became effective October 1, 2001.
- Expand open enrollment to include Plan C and J for all Medicare eligible individuals below age 65 due to disability if they enroll during the open enrollment period. The act also guarantees issuance of replacement coverage from Plans A and C to Medicare eligible individuals below age 65 due to disability who have been terminated by a Medicare managed care plan. This part became effective October 1, 2001.
- Allow the Commissioner to adopt temporary rules for Medicare supplement and long-term care insurance to implement federal requirements.
- Amend the law on notice to policyholders about the benefit concerning reconstructive surgery after a mastectomy. Currently, North Carolina law requires an annual notice to every person insured under the policy. The act requires annual notice only to the individual whose name is on the policy or certificate, if it is a group policy.
- Codify an administrative rule in effect since 1979 [11 NCAC 4.0319(5)] that requires a health or disability insurer to provide a claim status report to an insured if a claim has not been paid within 45 days after the claim was filed. This provision does not affect insurers operating under the prompt pay legislation enacted in 2000 and effective July 1, 2001. This amendment also requires that the claim status report give enough information so the insured will understand why the claim has not been paid and inform the insured if the insurer needs more information to process the claim. This part became effective July 1, 2001.

The act also amends other insurance laws to:

- Provide that if the Commissioner does not approve a document required to be filed with the Department of Insurance within a given period of time, the document is deemed to be approved and no insurer will be fined or penalized for using such forms, contracts, schedules of premiums, or other documents.
- Correct provisions enacted by S.L. 2001-223 regarding mortgage insurance reserves.
- Grant the Commissioner rulemaking authority in the area of actuarial science, specifically dealing with life insurance mortality tables, funding agreements, and rating methodologies and other actuarial principals for individual health insurance and HMO policies.
- Clarify that the Department of Insurance does not regulate local governments that provide health care benefits to their employees; and to clarify that when local governments agree to pool their liability, workers' compensation, property, or health benefit risks, and those local governments desire to be regulated by the Department under the Local Government Risk Pool Act (Article 23 of Chapter 58 of the General Statutes), they must notify the Commissioner that they intend to operate and be regulated under that Act.

Except as otherwise indicated, the act became effective August 3, 2001. (FF)

## Utilization Review and Grievance Changes

S.L. 2001-417 (HB 351) makes several substantive and clarifying amendments to the laws governing managed care utilization review and grievance procedures. The act clarifies that written complaints from covered persons regarding an insurer's denial of coverage based solely on the fact that the requested health care services are not covered under the policy does not constitute a

grievance, and is therefore not subject to appeal, if the coverage exclusion is clearly stated in the policy. The act also clarifies that a denial of coverage of health care services provided in an emergency setting based on the insurer's determination that the services did not constitute an emergency is subject to the managed care grievance and appeal procedures. The act also provides that if an insurer establishes a procedure for informal reconsiderations of denials of coverage, those procedures must be in writing, and the insurer has up to ten days to make a decision. If the insurer fails to make an informal reconsideration decision within ten days from the date of the request, the request for the informal reconsideration will constitute a request for a formal appeal of the decision, triggering the formal grievance process. The act also clarifies that a grievance concerning the quality of care provided by the covered person's provider is not subject to the appeal procedures. However, such grievances must be acknowledged by the insurer within ten days and the covered person must be informed that the grievance will be referred to the insurer's quality review panel and appropriate action will be taken, and the outcome will be confidential and not reported to the covered person.

The act also amends the definition of "health care provider" in two sections of the statutes to ensure that out-of-State health care providers providing health care services covered under a policy offered by insurers regulated by the Department of Insurance are subject to the laws governing prompt payment of claims and the managed care utilization review and grievance procedures. Finally, the act makes a technical amendment to the definition of "health maintenance organization" or "HMO" as that term is used in the laws governing the regulation of HMOs.

The act became effective October 1, 2001. (LA)

## Health Insurance Termination Notice

S.L. 2001-422 (SB 241) requires all group health plans, including health plans that are regulated under the federal Employee Retirement Income Security Act of 1974 (ERISA plans), to provide prior notice to the members of a group health insurance policy of the insurance fiduciary's intent to stop paying health insurance premiums or if no premiums are paid, of the fiduciary's intent to stop funding the plan. Prior law did not include ERISA plans to provide the notification. The act also requires insurers to notify every subscriber or certificate holder under a group health insurance contract of the termination of the contract at the same time the insurer provides the subscriber or certificate holder the "certification of creditable coverage" for the purpose of obtaining continuing coverage as required by the federal Health Insurance Portability and Accountability Act (HIPAA). Prior law required only the insurance fiduciary, not the insurer, to notify policyholders.

The act became effective December 1, 2001. (LA)

## Viatical Settlements Rewrite

S.L. 2001-436 (HB 359) overhauls the current law governing the business of viatical settlements. Prior to this act, viatical settlements were governed by one statute, G.S. 58-58-42, and administrative rules found in Title 11, Chapter 12, Section .1700 of the North Carolina Administrative Code. Repealing G.S. 58-58-42 and reorganizing Article 58 of Chapter 58, this enactment establishes the Viatical Settlement Act in a newly created Part 5 of Article 58 of Chapter 58, amends various provisions in Chapter 78A, Securities, and substantially mirrors the model act adopted by the National Association of Insurance Commissioners.

A viatical settlement agreement is one in which a policyholder with a catastrophic or life-threatening illness assigns the right to policy proceeds to a third party in exchange for immediate funds. The third party is known as the "viatical settlement provider". Prior to this act, viatical settlement providers, representatives, and brokers were required to register with the Commissioner of Insurance.

This act, among many changes, enhances the existing law governing the business of viatical settlements. These enhancements include:

- Expanded definitions reflecting development of the viatical settlements business.

- Requirement of licensing, rather than registration, of viatical settlement providers and brokers.
  - Increased regulatory authority over providers and brokers (licensees).
  - Examination by Commissioner in accordance with the Examination Law.
  - Multiple provisions specifically aimed at fraud prevention.
  - Required disclosures at various levels in the viatical settlement transaction.
  - Voidability provisions.
  - Procedural rules and deadlines for completing the viatical settlement transaction.
  - Specific inclusion of medical records under federal medical records confidentiality provisions.
  - Rules governing contacts with the insured.
  - Enhanced Commissioner authority for rulemaking.
  - Prohibited contracting.
  - Rules governing advertising viatical settlements.
  - Criminal penalties/prohibited acts.
  - Duty to report suspected fraud.
  - Greater Commissioner enforcement authority.
  - Regulation of viatical settlement contracts/viaticated policies as investments under securities statutes and regulations with provisions for: registration, exemption from registration, disclosures for sales and marketing, right of rescission, and criminal prosecution for violation of the securities provisions.
- The act becomes effective April 1, 2002. (FF)

## Managed Care Patients' Bill of Rights

S.L. 2001-446 (SB 199), as amended by S.L. 2001-508 (HB 168) enacts many new provisions of law and amends existing law to provide an array of health insurance benefits and consumer protections to persons covered by insurers and health benefit plans in North Carolina. The sections of the act affecting the regulatory authority of the Department of Insurance apply to insurers, health benefit plans, HMOs and hospital or medical services corporations (Blue Cross/Blue Shield) subject to State insurance regulation. The HMO liability provisions in the act apply to any insurer that administers or delivers a managed care plan in this State. In addition, the act requires the Executive Director of the Teachers' and State Employees' Comprehensive Major Medical Plan to comply with the provisions of the act to the extent they affect the Plan's managed care practices. Specifically, the act includes the following "rights":

**Continuity of Care in HMOs:** The act enacts a new section of law to allow enrollees in managed care plans continued access to their health care providers for ongoing treatment for special conditions for limited periods. This provision will apply in unforeseen circumstances when the enrollee's provider's contract is terminated or the enrollee's employer changes health plans and, as a result, the enrollee would otherwise lose coverage of the treating provider's services.

**Extended or Standing Referral to a Specialist:** The act amends current law to provide that a 'specialist' includes a 'subspecialist'; and to allow enrollees in managed care plans to select a specialist as their primary care physician under certain conditions, and to allow parents to select a pediatrician as their children's primary care physician.

**Access to Prescription Drugs:** The act amends current law to allow enrollees in managed care plans greater access to drugs for which access is limited or restricted if a non-restricted drug has been found to be detrimental or ineffective in treating the enrollee's condition.

**Managed Care Patient Assistance Program:** The act establishes a patient assistance program to provide information and assistance to enrollees of managed care plans. This section of the act became effective January 1, 2002.

**Prohibition of Provider Discrimination:** The act amends current law to prohibit insurers, health benefit plans, HMOs and hospital or medical service corporations regulated by the Department

of Insurance from limiting an enrollee's access to covered services provided by an optometrist, podiatrist, certified clinical social worker, certified substance abuse professional, licensed professional counselor, dentist, chiropractor, psychologist, pharmacist, certified fee-based practicing pastoral counselor, advanced practice nurse, or a physician assistant when the services are within the provider's scope of practice; and to prevent exclusion of any of these providers from participation in provider networks solely on the basis of the provider's licensure. The act does not prohibit a managed care plan from subjecting these providers to the same utilization review, prior approval or referral requirements that the managed care plan applies to all providers of the particular service.

**Prohibition on Provider Incentives:** The act prohibits insurers from offering or paying any type of financial incentives to providers to limit, delay or reduce medically necessary and appropriate health care services covered under the health benefit plan. The act does not prohibit insurers from paying providers on a capitated basis.

**Provider Directories:** The act requires health benefit plans that maintain a network of providers to provide enrollees a provider directory that includes an annually updated listing of the plan's network of providers and to provide enrollees direct telephonic or online access to up-to-date network information.

**Disclosure of Payment Obligations:** The act requires insurers to inform enrollees in preferred provider networks how the insurer calculates the proportion of the cost the enrollee must pay the provider for a particular service and how much the insurer will pay the provider. If the insured has a stated co-payment to pay, then the insurer must provide clear notice that the insured's obligation to the provider could exceed their co-payment.

**Coverage of Newborn Hearing Screening:** The act requires insurers to provide coverage of medically necessary costs related to newborn hearing screening.

**Coverage of Clinical Trials:** The act requires health benefit plans to provide coverage of medically necessary health care services associated with the participation in phase II, phase III, and phase IV covered clinical trials by its insureds or enrollees who meet protocol requirements of the trials and provide informed consent.

**Independent, External Review Process:** The act enacts procedures and standards for the establishment and maintenance of a process for enrollees in managed care plans to request a thorough review by a panel of independent health care professionals of internal appeal and second-level grievance review decisions upholding an insurer's decision not to allow reimbursement for a requested covered health care service or stay in a health care facility. The act requires the independent review organization to make its determination within 45 days of initial request, or if expedited, within 4 days of the request. The decision is binding upon the insurer. The insurer pays costs of the review and there is no minimum dollar threshold that must be met. This section of the act becomes effective July 1, 2002.

**Health Care Liability:** The act allows enrollees of managed care plans, after exhausting the enrollee's administrative remedies through internal and independent review procedures, to hold managed care entities liable for limited damages resulting from the managed care entity's failure to use ordinary care in making health care decisions regarding whether or when an enrollee receives reimbursement for a covered service or whether or when an enrollee should receive a covered health care service. The act provides immunity from liability to employers that purchase health care coverage or assumes risk on behalf of its employees and voids indemnification and hold-harmless clauses between a managed care entity and a health care provider or provider organization or an employer or employer group organization for the acts of the managed care entity. The act prohibits an enrollee from holding the enrollee's health care provider liable for the independent actions of the managed care entity. The act allows a managed care entity held liable under the act to seek indemnification for damages from a physician or other health care provider when the liability of the managed care entity is based on an administrative decision to approve or disapprove reimbursement or to deny, delay or reduce coverage of a requested health care service that is made by the provider or provider group pursuant to an explicit and voluntary agreement to assume responsibility for such decisions, and the decision was made independent of any influence from the managed care entity. This section of the act becomes effective July 1, 2002.

Unless otherwise noted, the act becomes effective March 1, 2002. (LA)

## **Moratorium on Health Insurance Mandates**

S.L. 2001-453 (HB 1048) places a moratorium on coverage mandates on health benefit plans between July 1, 2003, and July 1, 2005. Additional coverage mandates not in effect as of June 30, 2003 may not be included in policies issued, delivered or renewed during that time period. The moratorium does not prevent an employer from voluntarily expanding coverage on any group or individual health benefit plan or policy covering the employer and the employees.

The act also authorizes the Legislative Research Commission (LRC) to study the issue of health insurance mandates and the cost to employers and individuals of unfunded health insurance mandates. The LRC shall consider a cost-benefit analysis to determine cost-efficiency, including any cost-benefit analysis performed by the Department of Insurance. The LRC is directed to make a progress report to the 2001 General Assembly when it reconvenes in 2002 and make a final report to the 2003 General Assembly.

The act became effective October 28, 2001. (FF)

## **Property and Casualty Insurance**

### **Insurance for Public Works Projects**

S.L. 2001-167 (SB 852) authorizes the Department of Insurance to obtain design and construction insurance or provide for self-insurance against property damage in connection with the construction of public works projects. Under the act, the Department is allowed to purchase workers' compensation and general liability insurance to cover both general contractors and subcontractors doing work on a specific contracted work site. Without such authority, contractors and subcontractors provide their own coverage and the cost of this coverage is passed on to the State in the bidding process. Also under the act, the Department is authorized to use an owner-controlled or wrap-up insurance program to handle insurance construction of the State's public works projects, if certain criteria are met. An owner-controlled or wrap-up insurance program consists of a series of insurance policies covering contractors, engineers, architects and other participants in a project or group of related projects for purposes of general liability, property damage, and workers' compensation.

The act became effective June 7, 2001. (FF)

### **Workers' Compensation for Pickup Firefighters**

S.L. 2001-204 (SB 299) allows pickup firefighters of the Division of Forest Resources, Department of Environmental and Natural Resources (DENR) to be eligible for workers' compensation benefits. It specifically adds to the definition of "employee" under G.S. 97-2(2), an "authorized pickup firefighter" of the Division of Forest Resources of DENR while working during an emergency to put out fires. "Authorized pickup firefighter", is defined by the act as a person having completed wildland firefighter fire suppression training who is available as needed by the Division for emergency firefighting. The act further provides that the Division of Forest Resources is the employer of the "authorized pickup firefighter" when engaged in fire suppression activities for purposes of the Workers' Compensation Act. For compensation, it provides that if an authorized pickup firefighter died or suffered a disabling injury while working during an emergency to put out fires, benefits would be based on the average weekly wages from the employment from which the firefighter's principal income was earned, but at a minimum would be 66 2/3 % of the maximum weekly benefits

established by G.S. 97-29, the statute which provides the compensation rates for total incapacity under the Workers' Compensation Act.

The act became effective June 15, 2001 and applies to claims filed on or after that date. (FF)

## Restore Workers' Compensation Stability

S.L. 2001-216 (HB 1045) reverses statutorily the North Carolina Court of Appeals decision in Hansen v. Crystal Ford-Mercury, Inc., 138 N.C. App. 369 (2000). Hansen held that an insurer may intervene as a real party in interest in a workers' compensation proceeding when it alleges it has paid medical expenses due to an employee's compensable injury and is entitled to reimbursement and liability is disputed by the employer.

This act specifically declares that an insurer covering an employee under a health benefit plan, disability income plan, or any other health insurance plan is not a real party in interest in a workers compensation proceeding or settlement agreement and has no standing to intervene or participate in either the proceeding or agreement to determine a claim's compensability or seek reimbursement for medical payments under its plan. However, the act allows such an insurer to seek reimbursement from the party that is liable or responsible for specific medical charges according to a final adjudication of a claim under the Workers' Compensation Act (Act) or order of the North Carolina Industrial Commission (Commission) approving a settlement agreement entered into under the act.

The act also declares that Commission approval of a settlement agreement is final and not subject to review or collateral attack. At the same time, before the Commission, under this act, can approve a settlement agreement it must meet three requirements

- Be deemed by the Commission to be fair, just, and in the best interest of all parties;
- List all known medical expenses of the employee related to the injury as of its date, including disputed expenses and list, if any, expenses to be paid by the employer under the agreement; and
- Findings that the positions of all parties to the agreement are reasonable as to the payment of medical expenses, upon the Commission considering: (i) whether the employer admitted or reasonably denied the employee's claim; (ii) the amount of all related medical expenses of the employee, including those in dispute; and (iii) the need for finality in the litigation.

The act also clarifies that it has no impact on the lien recovery statutes of G.S. 44-49 and G.S. 44-50.

In addition, the act clarifies that Commission records, other than awards or reviews of awards, to the extent the records reference accidents, injuries and settlements, are not public records under the public records statute, G.S. 132-1. Furthermore, the act prohibits an accident or health insurer from excluding from coverage claims subject to the Act, unless the exclusion is only for specific medical charges for which the employee, employer or carrier is liable or responsible according to a final adjudication of a claim or Commission order approving a settlement agreement. Finally, the act prohibits an insurer from circumventing the intent of the statutory change by offsetting or reversing a health plan payment against a provider reimbursement for other medical charges or contracting with a medical provider to do the same, unless such charges are properly attributable to the employee pursuant to the new restrictions.

The act became effective June 15, 2001. (FF)

## Workers' Compensation Amendments

S.L. 2001-232 (SB 466) amended the workers' compensation laws:

- To increase the coverage for burial expenses under the Workers' Compensation Act, when an employee dies from a compensable injury or occupational disease under the act, from a maximum of \$2000 to a maximum of \$3500;

- To require each workers' compensation insurance carrier to use the current approved reference filing, rather than the past filing of its choice, when establishing its final rates for individual workers' compensation insured; and
- To provide equitable levels of review of workers' compensation insurance rate setting by eliminating workers' compensation insurance carrier's right to appeal a decision of the North Carolina Rate Bureau following a hearing brought by a policyholder adversely affected by the Rate Bureau's insurance rate setting.

The sections of this act increasing burial expense coverage became effective October 1, 2001. The remainder of the act became effective June 21, 2001. (FF)

## **Umbrella Insurance Improvements**

S.L. 2001-236 (HB 357) facilitates the purchase or continuation of umbrella insurance coverage for those whose auto insurance policies have been ceded to the NC Motor Vehicle Reinsurance Facility, the high-risk auto liability insurance pool, by increasing the dollar amounts of auto liability insurance coverage that can be ceded to the Facility for that purpose. Prior to this amendment, many consumers who wanted to obtain or maintain umbrella insurance coverage had to purchase costly "gap" coverage because umbrella insurers required higher auto liability insurance coverage than was statutorily permitted to be ceded to the Facility.

The act also amends G.S. 58-36-1(3), which governs the scope of coverage of the North Carolina Rate Bureau, to provide that personal excess liability insurance or "umbrella insurance" does not fall under the jurisdiction of the NC Rate Bureau; and it adds personal excess liability insurance or "umbrella insurance" to the list of kinds of insurance that insurers may be authorized to write in NC.

The act became effective October 1, 2001. (FF)

## **Workers Comp. Cancellations and Renewals**

S.L. 2001-241 (SB 468) provides guidelines, rights, and obligations for worker's compensation insurance policy cancellations and nonrenewals consistent with the guidelines, rights, and obligations for other lines of property and liability insurance. Prior to the passage of this act, employers were afforded less protection against inadequate notice of policy cancellations, nonrenewals, or changes in premium rates or coverage with regard to worker's compensation insurance compared to other kinds of insurance purchased by businesses.

Under this act, a carrier may only cancel a policy for one of the following reasons and must provide 15 days written notice to the insured by registered or certified mail stating the permitted reason:

- Nonpayment of premium.
- Material misrepresentations or nondisclosures of material facts in policy transactions.
- Material changes in risk that could not have been contemplated by the parties.
- Substantial breach of contractual duties, conditions, or warranties materially affecting insurability.
- An insured's fraudulent act that materially affects insurability.
- An insured's willful failure to take reasonable loss control measures that materially affect insurability.
- Loss of facultative reinsurance or substantial changes in applicable reinsurance.
- A determination by the Commissioner of Insurance that continuation of the policy would violate State law.

The act requires insurers to provide 45 days written notice by mail of a refusal to renew a policy. The act also requires insurers to give 30 days notice by mail of increases in deductibles or premiums or any lowering of coverage limits for reasons within the exclusive control of the insurer or other than at the policyholder's request. Such reasons do not include changes in experience

modification, exposure, or loss cost rate. Copies of all notices required under this act must also be mailed to the agent or broker of record.

The act became effective October 1, 2001 and applies to policies issued, renewed or subject to renewal, or amended on or after that date. (TG)

## Liability Insurance for University Students

S.L. 2001-336 (SB 627) requires that in order for a student to be issued a parking permit for the campus of any constituent institution of the University of North Carolina, the student must provide the name of the insurer for the vehicle and the liability policy number, and certify that liability insurance is carried on the vehicle at least at the minimum level required in North Carolina, under G.S. 20-279(1). At the time of enactment, the minimum levels of motor vehicle liability insurance were: \$30,000 for bodily injury or death of one person in any one accident; \$60,000 for bodily injury or death of two or more persons in any one accident; and \$25,000 for injury to or destruction of property of others in any one accident. These requirements for obtaining a parking permit apply regardless of the state of residency of the student or the state of registration for the motor vehicle.

The act became effective January 1, 2002, and applies to all parking permit requests submitted on or after that date. (FF)

## Motorcycle Insurance Rates

S.L. 2001-389 (SB 729) provides that rates for insurance against theft or physical damage to motorcycles are to be set by insurer's filings with the Department of Insurance rather than being set by the N.C. Rate Bureau. Prior to the enactment, the N.C. Rate Bureau established rates, subject to Commissioner approval, for motorcycle insurance, both for liability coverage and coverage against theft of or physical damage to the vehicle. Though it removes damage and theft coverage from the Rate Bureau's jurisdiction, it leaves the provisions governing liability coverage for motorcycles unaffected. It also provides that damage and theft coverage may be written as an endorsement to a liability policy.

The act also requires the Department of Insurance, beginning February 1, 2003, to report annually to the President Pro Tem of the Senate and the Speaker of the House on the effectiveness of the act in assuring the provision of insurance coverage to motorcyclists at fair and economical rates.

The act became effective January 1, 2002, but provided that rates, rating systems, territories, classifications, and policy forms lawfully in use on that date could continue to be used thereafter. (FF)

## Accident Prevention Course Reduction

S.L. 2001-423 (HB 164) specifically authorizes any insurance company member of the North Carolina Rate Bureau to condition a deviation in motor vehicle insurance rate for insureds 55 years or older, or other insureds, upon completion of an accident prevention course, approved by the Commissioner of Motor Vehicles.

This act also declares that the Commissioner or Department of Insurance's approval or disapproval of required submissions to the Commissioner or Department does not constitute an agency decision, except to the person or entity making the submission or an intervenor in the submission. This would negate the apparent conclusion of Prentiss v. Allstate Ins. Co., NO. COA00-711 (Filed: June 19, 2001). Prentiss appeared to conclude that the Commissioner of Insurance's approval or disapproval of the Safe Driver Incentive Plan (SDIP), a plan required to be submitted by the Rate Bureau, constituted an agency decision. The potential impact of that conclusion would be that anyone objecting to rates on motor vehicle liability insurance or any other submitted filing would



be entitled to an administrative hearing before the Department. Until this case it was commonly understood that challenges to an increase in rates under the SDIP should be conducted by a hearing before the North Carolina Rate Bureau. The Department anticipated it would have been unable to perform its primary statutory responsibilities because of the projected overwhelming number of hearings it would have been forced to conduct. The amendment restores the applicable procedures to the pre-Prentiss status.

S.L. 2001-236 increased the amounts of liability insurance cedable to the Reinsurance Facility to facilitate the purchase of excess or umbrella coverage by motor vehicle owners. The legislation's original effective date was October 1, 2001. The act delayed the effective date of S.L. 2001-236 until January 1, 2002 to allow the Reinsurance Facility more time to adjust to the changes.

The act became effective September 22, 2001. (FF)

## **Motor Vehicle Repairs**

S.L. 2001-451 (HB 13) prohibits an insurer or insurer representative from recommending a claimant use a particular motor vehicle repair service or source of repairs without clearly informing the claimant that (i) the claimant does not have to use the recommended repair service; (ii) the claimant can use the repair service the claimant chooses; and (iii) the amount the insurer determines is payable under the policy will be paid whether or not the recommended repair service is used. These notices would have to be included in the auto insurance policy forms promulgated by the N.C. Rate Bureau and approved by the Commissioner of Insurance.

This act also conforms the surplus lines law to the Gramm-Leach-Bliley Act by requiring a resident licensee or regulatory support organization to countersign reports filed by a surplus lines carrier and the countersigning resident licensee or regulatory support organization to remit the premium taxes owed by the surplus lines carrier.

It also corrects an inadvertently created gap in the notice of cancellations requirements for workers' compensation insurance. Senate Bill 468, enacted as S.L. 2001-241 rewrote the laws governing cancellation and notice for workers' compensation but mistakenly omitted provisions for group self-insurers' of workers' compensation. This act amends G.S. 58-47-125 to correct the omission.

The section of this act governing motor vehicle repairs becomes effective April 1, 2002 and applies to policies issued on or after that date. The section of the act amending the surplus lines law became effective January 1, 2002. The remainder of the act became effective October 28, 2001. (FF)

## **Workers' Compensation Awards Filed as Judgments**

S.L. 2001-477 (SB 881) rewrites G.S. 97-87 to eliminate the requirement that suit be filed and a court finding be made before an agreement, order or award of the Industrial Commission in workers compensation matters can be reduced to a judgment and entered in the judgment docket. The act establishes the use of Statements of Accrued Arrearages and Certificates of Accrued Arrearages and provides that when a party in interest files with the clerk of superior court a certified copy of an award, as defined by the rewritten section, or a Certificate of Accrued Arrearages (Certificate), the clerk shall docket and index a judgment as provided in Chapter 1 of the General Statutes. Once docketed the judgment is enforceable as provided in Chapter 1 of the General Statutes. The act defines "award" to include a form or award admitting compensability, in whole or part, and establishing payments, in whole or part; a Commission-approved memorandum of agreement; a Commission order or decision; and a Commission award either affirmed on appeal or from which there has been no appeal.

In rewriting the statute, the act establishes the procedure for a claimant to obtain a Certificate when an award or portion of an award provides for periodic payments to be paid after the date of an award, and sets forth the content requirements of a Certificate. The procedure allows the

party against whom the judgment is sought to prove the sum of payments made, prior to the Commission's issuance of a Certificate, and also provides for post-decision review of the Commission's decision.

The act also amends G.S. 1-209, which governs what judgments the clerk of superior court is authorized to enter, to authorize the clerk to enter judgments on awards and Certificates of the Industrial Commission in workers compensation matters, as provided in the rewritten G.S. 97-87.

The act becomes effective June 1, 2002, and applies to awards, as defined by the act, rendered before, on, or after that date and Certificates issued on or after that date. (FF)

## General Insurance and Miscellaneous

### Risk Sharing Plan Sunset Repeal

S.L. 2001-122 (HB 352) repeals G.S. 58-42-55, which placed an expiration date of July 1, 2001 on Article 42 of Chapter 58. Article 42 of Chapter 58 grants the Commissioner of Insurance the authority and procedures for establishing a risk sharing plan when the Commissioner determines, after a hearing, that in all or any part of the State, any amount or kind of insurance is not readily available in the voluntary market and that the public interest requires the availability of that insurance.

The act became effective May 25, 2001. (FF)

### Insurance Exam Law Amendments

S.L. 2001-180 (SB 321) updates the existing Exam Law within Chapter 58, Insurance, to:

- Clarify that the insurance examination laws apply to all "entities" subject to regulation by the Insurance Commissioner. Prior to the act, only "insurers" were expressly subject to examination by the Commissioner under N.C.G.S. §58-2-131, and other entities subject to the regulatory authority of the Commissioner were not explicitly included;
- Authorize an examination when the Commissioner deems it prudent for the protection of the public. Prior to the act, the Commissioner could examine an insurer whenever the Commissioner deems it prudent for the protection of policyholders only, not the public in general; and
- Authorize sharing of documented information (working papers, recorded information, documents and copies) produced by, obtained by, or disclosed to the Commissioner under these same examination laws. Sharing is authorized: (i) in furtherance of legal or regulatory action brought as part of the Commissioner's duties; (ii) with other state, federal, and international regulatory agencies and law enforcement and with the National Association of Insurance Commissioners (NAIC) provided the recipient agrees to maintain the privileged and confidential status of such information; (iii) for the Commissioner to receive documented information or communications from the NAIC and regulatory and law enforcement officials of other foreign or domestic jurisdictions and maintain as confidential and privileged such documented information when it has notice or understands that the information is confidential and privileged under the laws of the jurisdiction that is the source of the information; (iv) and for the Commissioner to be able to enter into agreements governing the sharing and use of information consistent with this statute. Disclosure as provided in the sharing provisions would not waive any existing privilege or claim of confidentiality. Reciprocity would be provided for any privilege from another state substantially similar to that provided in this statute. Prior to the enactment, until the insurer subject to an examination had accepted and approved the final examination report or been given an opportunity to be heard on the report and rebut statements in the report, the Commissioner could not make public the financial

statement, findings or examination report or any report affecting the status or standing of the insurer.

This enactment was needed for the Department of Insurance's accreditation by the National Association of Insurance Commissioners.

The act became effective June 7, 2001. (FF)

## Insurance Producer Licensing

S.L. 2001-203 (SB 318), as amended by S.L. 2001-451, Sec. 2.2 (HB 13, Sec. 2.2) and by S.L. 2001-487, Sec. 63 (HB 338, Sec. 63), revises the laws on licensing insurance agents and brokers, or "producers", to conform to the Model Uniform Insurance Producer Licensing Act of the National Association of Insurance Commissioners in order to achieve national uniformity in the licensing of insurance producers as provided by the federal Gramm-Leach-Bliley Act. These new provisions include:

- General licensing requirements for agents, brokers, limited representatives, adjusters, and motor vehicle damage appraisers, including a list of individuals who are and are not required to be licensed depending on the activity in which they are engaged.
- Application requirements for obtaining a resident insurance producer license for both individuals and business entities.
- Uniform standards for license suspension, probation, revocation, and nonrenewal including:
  - A list of 17 "for cause" reasons for which the Commissioner may take adverse action against a licensee.
  - A requirement that licensees notify the Commissioner within three days of the commencement of a bankruptcy, insolvency, or receivership proceeding.
  - A requirement that any appointment by a licensee whose license has been suspended or revoked shall likewise be revoked.
- Uniform procedures for regulators, companies, and agents to report and administratively resolve for cause and not for cause terminations with producers.
- Authorization for the Commissioner to issue temporary licenses for up to 180 days without an exam in certain circumstances.
- Uniform standards regarding entities that may or may not receive or assign a commission related to the sale of an insurance policy.

This legislation also makes changes to the existing law to conform to the Model Act, including:

- Creating several new defined terms.
- Providing that a written exam is no longer required.
- Making conforming changes with regard to the licensing of nonresidents.
- Requiring that surplus lines regulatory support organizations:
  - Countersign nonresident produced surplus lines coverages.
  - Remit premium taxes for those coverages.
  - Charge the nonresident surplus lines licensee a fee for the certification and countersignature.

The section relating to surplus lines regulatory support organizations became effective October 1, 2001, except for the requirement regarding the payment of premium taxes, which became effective January 1, 2002. The section that makes a technical change to the definition of "agent" and the section that makes a clarifying change to the law regarding the prohibition of rebates and charges in excess of the premium became effective June 15, 2001. The remainder of the act becomes effective July 1, 2002. (TG)

## Gramm-Leach-Bliley Act Requirements

S.L. 2001-215 (HB 350) adds two new sections and modifies an existing section of the Insurance Chapter to comply with the federal Gramm-Leach-Bliley Act. The Gramm-Leach-Bliley Act, also known as the "Financial Services Modernization Act", was signed into law on November 12, 1999. It eliminated many federal and state law barriers to affiliation among banks and securities firms, insurers, and other financial service providers. Several provisions of the act either preempt the States in certain areas or require the States to enact compliance legislation. Consequently, S.L. 2001-215 (HB 350) makes the following provisions:

- It authorizes the Commissioner of Insurance to share information with federal and state financial institution regulators about insurance companies that are affiliates of depository institutions or of financial holding companies.
- It conforms the State law applicable to affiliations between depository institutions and insurers to the Gramm-Leach-Bliley Act. Under the Gramm-Leach-Bliley Act, a state is limited to a 60-day period of review preceding a proposed affiliation between a depository institution and any insurer. With respect to required capital infusions related to a change in control, the Gramm-Leach-Bliley Act also provides that states have only 60 days before the effective date of the transaction to require a restoration of capital in connection with a change in control.
- It limits the investment by insurers in the voting securities of depository institutions to 5% of the insurer's assets.

The act became effective on June 15, 2001. (TG)

## Insurance Financial Amendments

S.L. 2001-223 (SB 459) as amended by S.L. 2001-487, Sec. 103 (HB 338, Sec. 103) amends multiple provisions in Chapter 58 governing financial aspects of insurance. The amendments make changes in the areas of:

- Insurance company reserving methods.
- Insurance company licensing provisions (This part became effective July 1, 2001.).
- Reinsurance for domestic companies (A portion of this part became effective January 1, 2002.).
- Domestic company formation.
- Insurance company solvency protection.
- Life insurance company variable accounts.
- Insurance company consolidations.
- Insurance company investments.
- Mutual insurance companies.
- Reinsurance intermediaries.
- Mortgage guaranty insurance.
- Risk-based capital requirements.
- Asset protection.
- Foreign insurance companies.
- Holding company systems.
- Surplus lines insurance.
- Risk retention groups.
- Insurance company receiverships.
- Managing general agents.
- Self-insured workers' compensation.
- Continuing care retirement communities.
- Insurer insolvency refund thresholds.

It also authorizes domestic insurance companies to form "protected cells" to access alternative sources of capital and achieve the benefits of securitization. A "protected cell" as defined by the act, means an identified pool of assets and liabilities of a domestic insurance company, segregated and insulated as provided in the act, from the remainder of the insurance company's assets and liabilities. An insurance company's use of protective cells is intended to facilitate and make more efficient insurance securitization transactions.

Except as otherwise indicated, the act became effective June 15, 2001. (FF)

## Insurance Information Privacy

S.L. 2001-351 (SB 461) amends the North Carolina Insurance Information and Privacy Protection Act (Privacy Protection Act) to conform it to the privacy protection requirements of the federal Gramm-Leach-Bliley Act, Public Law 106-102. The act also enhances consumer protections and relieves the industry of certain restrictions where there is no adverse affect on consumer protection. In several ways, the act amends the Privacy Protection Act's provisions governing three broad areas: notice of insurance information practices, contents of the notice, and disclosure of individuals' personal or privileged information.

Prior to the enactment, the Privacy Protection Act applied to protect information of applicants for, policyholders of, and insureds of life, accident and health insurance and property and casualty insurance. The act amends G.S. 58-39-10, which governs the scope of the Privacy Protection Act, to include persons whose property is the subject of mortgage guaranty insurance to receive notice under the Privacy Protection Act. Prior to this change, such persons were not entitled to receive notice under the Privacy Protection Act because the policyholder, applicant, and insured of a mortgage guaranty policy is the mortgage holder, not the person whose property is the subject of the mortgage. The act also replaces reference to "life, accident and health" with "life, health or disability" to conform the language to the model insurance information and privacy protection act.

The act also redefines "adverse underwriting decision" in the definitions section, G.S. 58-39-15, to include risk placement by an insurance institution with an insurance institution specializing in substandard risks. The rendering of an "adverse underwriting decision" triggers special notifications to the policyholder, applicant, or individual proposed for coverage. The Privacy Protection Act also prohibits insurance institutions, agents, or insurance support organizations from seeking only information on the fact of a previous adverse underwriting decision without requesting the reason behind it and prohibits the same from basing an adverse underwriting decision in whole or in part on the fact of a previous adverse underwriting decision. Thus the act expands the types of actions which must be followed by this special notice and which are afforded this special protection.

The Privacy Protection Act, in G.S. 58-39-25, sets forth the contents and timing of notice of insurance information practices, as established at the state level. This act creates a new parallel section G.S. 58-39-26 establishing separate federal privacy disclosure notice requirements, conforming to Gramm-Leach-Bliley requirements. Under this new section, the federal privacy notice must be provided:

- To all policyholders and applicants no later than: (i) an insurance institution or agent makes initial disclosure of personal information to a person for marketing of a product or service, or (ii) the time of delivery of the insurance policy or certificate; and
- For policies already issued and in force, at least annually.

Under this new statutory section, the insurance institution or agent must notify the policyholder or applicant of the institution or agent's policies and practices for: disclosing nonpublic personal information consistent with Section 502 of Gramm-Leach-Bliley, disclosing nonpublic personal information of former customers, and protecting nonpublic personal information of consumers. The information must include the categories of persons to whom the information is given, the categories of nonpublic information collected by the institution or agent, the institution or agent's policies for maintaining confidentiality and security of nonpublic personal information in accordance with Section 501 of Gramm-Leach-Bliley, and the disclosures required under the Fair Credit Reporting Act, if any.

The act creates certain exceptions to the federal notice requirements in the newly created G.S. 58-39-27. Included are provisions which:

- Allow an institution or agent and one or more of its affiliates to provide a joint notice, as long as it is accurate respecting all the parties providing the notice;
- Allow an institution or agent to provide a single notice if two or more applicants or policyholders jointly obtain or apply for an insurance product;
- Allow an institution to send either separate or combined notices to satisfy the state level requirements of G.S. 58-39-25 and the federal level requirements of G.S. 58-39-26;
- Exempt an institution or agent from sending notice to a policyholder or applicant if the last known address of the policyholder or applicant is deemed invalid or to a former policyholder if there has been no communication with the policyholder about the relationship within the last 12 months, other than privacy notices, or other legally mandated material or promotional material.
- Exempt an agent from the notice requirements when only sharing with the agent's principal or affiliate of the principal or when sharing non-medical information, to an insurance institution solely to renew, transfer, replace, reinstate, or modify an existing policy.

The act requires the federal privacy notice be given to persons applying for or obtaining coverage under a group or blanket insurance contract, employee benefit plan, or group annuity contract whether individually underwritten or not, except an insurance institution or agent that does not disclose personal information about an applicant or policyholder to a person for marketing of a product or service, as permitted by G.S. 58-39-75(11), can satisfy the federal notice requirement with notice to the holder of the group or blanket insurance or annuity contract or the employee benefit plan sponsor.

The act exempts title and mortgage guaranty insurance from the regular notice timing requirements. It requires a title insurance company to only provide notice at the time the final policy is issued, and, in the case of mortgage guaranty insurance, that notice need only be provided at the time the master policy is issued and whenever there is a material change in the insurer's disclosure policies and practices.

The act also further amends the Privacy Protection Act:

- To require that disclosure based on a person's written authorization submitted by a person other than the institution agent or insurance-support organization be based on an authorization meeting the requirements for content of disclosure authorization forms, as specified in G.S. §58-39-35.
- To limit disclosure to lienholders and other persons having a legal or beneficial interest in an insurance policy to prohibit disclosure of medical record information not otherwise permitted by N.C.G.S. §58-39-75, which sets forth information disclosure limitations and conditions.
- By creating a new section, G.S. §58-39-76, to limit the sharing of account number information for marketing purposes.
- To prohibit disclosure of medical record information, even when disclosure is allowed to an affiliate for auditing an institution or agent or for marketing of an insurance product or service.
- To allow disclosure to a third party to allow the third party to perform marketing functions regarding the provision of information about the disclosing insurer's own products, services, and program.
- To allow information about joint market program participants to be shared in connection with the marketing of a financial product or service where the program participants and the type of information to be shared are identified to the insured when the insured is first offered the financial product or service in the program.

The act became effective January 1, 2002, and applies to policies and contracts newly issued or renewed on or after that date. (FF)

## Authorization of Reimbursement from the Insurance Regulatory Fund

S.L. 2001-424, Part XIV-E (SB 1005, Part XIV-E) amends G.S. 58-6-25, which governs the levying and use of an insurance regulatory charge on each insurance company licensed to do business in this State, to expand the purposes for which proceeds from the charge may be used. Prior to this enactment, these funds, which are credited to the Insurance Regulatory Fund, could be used to reimburse the General Fund for the following:

- Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.
- Money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under the Medical Care Data Act, and in purchasing reports of patient data from statewide data processors certified under that act.
- Money appropriated to the Department of Revenue to pay the expenses incurred in collecting and administering the premium taxes on insurance companies.

The act adds the following purposes for which proceeds from the charge may be used to reimburse the General Fund:

- Money appropriated to the Managed Care Patient Assistance Program, created by S.L. 2001-446 (SB 199) and established under G.S. 143-730, to pay the actual costs of administering the program.
- Money appropriated to the Department of Insurance for the implementation and administration of independent external review procedures, also created by S.L. 2001-446 (SB 199) and required by Part 4 of Article 50 of Chapter 58 of the General Statutes.

This Part became effective upon the enactment of S.L. 2001-446 (SB 199). S.L. 2001-446 was enacted on October 18, 2001. (FF)

## Labor Department/Elevator Inspection Fee Receipts

S.L. 2001-424, Part XVIII (SB 1005, Part XVIII) allocates the increased elevator and amusement device inspection fee receipts, generated pursuant to enactment of S.L. 2001-427, Budget Revenue Provisions, to support the Elevator and Amusement Device Bureau and requires the Director of the Budget to reduce appropriations to the Department of Labor as provided in G.S. 143-25, governing maintenance appropriations.

This Part became effective upon the enactment of S.L. 2001-427 (HB 232), which applies to taxes imposed for taxable years beginning on or after July 1, 2001. (FF)

## Major Pending Legislation

### State Self-Funded Health Care Plan

SB 822. See Employment.

### Managed Care/Patient Access

HB 1109 would require health benefit plans that provide eye and vision benefits to allow any eye care provider to participate in the plan's provider network and to allow the plan's enrollees direct access to these providers for primary eye and/or vision care services that are covered under the plan. Insurers must treat non-contracting providers the same as a contracted provider with respect to

reimbursement for covered services. The bill also would require certain provisions to be included in any contract between a health benefit plan and an eye care provider, and requires an insurer to include on its grievance review panel at least one eye care provider with the same type of license as the eye care provider who provided or requested a service that is the subject of the grievance review. The bill does not require insurers to provide primary eye and vision care benefits.

The bill is currently pending in the Senate Health Care Committee. (LA)

## Studies

### Legislative Research Commission

#### The 2001 Studies Bill

S.L. 2001-491, Secs. 2.1(2)a-f, 2.1(5)a, and 2.1C (SB 166, Secs. 2.1(2)a-f, 2.1(5)a, and 2.1C) authorizes the Legislative Research Commission to study:

- High-risk health insurance pools.
- Insurance availability in beach and coastal areas.
- Moratorium on health insurance mandates.
- Uninsured motorist coverage.
- Motor vehicle insurers/no mandates/nonoriginal crash parts.
- Workers' compensation insurance classifications.
- "Steering" and the offering of incentives with regard to motor vehicle glass repairs.
- The availability of liability insurance for long-term care facilities, physicians and hospitals in this state.

These sections became effective December 19, 2001. (FF)



## Chapter 14

### Local Government

Erika Churchill (EC), Kristen Crosson (KC),  
Frank Folger (FF), Esther Manheimer (EM),  
Giles Perry (GSP), Barbara Riley (BR)

and others (See references by initials on page 269 of this publication.)

## Enacted Legislation

### **Private Sale/Hurricane Floyd Flood Home Sales**

S.L. 2001-29 (HB 18) creates a scope- and time-limited exemption from the requirements imposed on counties in selling property in order to facilitate the administration of relief programs to homeowners harmed from floods arising out of Hurricane Floyd. Under the Hazard Mitigation Grant Program, a 75% federally funded and 25% State funded program, a county buys homes at the pre-disaster fair market value and the homeowner uses the proceeds of the sale to relocate. This act allows counties where real property was affected by Hurricane Floyd to sell the homes back to the original homeowners from whom the properties were purchased without complying with the sale and disposition of property requirements set out in Article 12 of Chapter 160A. The sale may be conducted only if:

- The home is sold only to the individual(s) that owned the home at the time of Hurricane Floyd, September 15, 1999.
- The home is now in compliance with the NC Building Code, as verified and certified by the county Planning and Development Department.
- The home is sold on or before July 31, 2001.

The act became effective April 19, 2001. (FF)

### **Amend Public Health Authorities Act**

S.L. 2001-92 (SB 221). See **Health and Human Services**.

### **Sanitation Rules/Family Foster Homes Exempt**

S.L. 2001-109 (SB 541). See **Children and Families**.

### **Civil Penalty Authority/Public Health Violation**

S.L. 2001-120 (HB 837) amends G.S. 153A-77(a) to authorize a board of county commissioners that has opted to exercise its jurisdiction over the local board of health pursuant to that subsection to enforce public health rules it adopts through the imposition of a civil penalty notwithstanding G.S. 130A-25, which provides that anyone who violates a rule adopted by a local board of health shall be guilty of a misdemeanor, unless the local health rule specifically states that a violation of the rule is a misdemeanor.

The act became effective May 25, 2001. (EC)

## County Road Names

S.L. 2001-145 (SB 380). See **Transportation**.

## Area Mental Health Background Check

S.L. 2001-155 (HB 857). See **Health and Human Services**.

## Audits for Local Governments

S.L. 2001-160 (SB 434) transfers the authority to approve certain standards and procedures for local government audits from the State Auditors Office to the Local Government Commission.

G.S. 139-34 requires local governments to have an annual independent audit of their accounts. If required by the secretary of the Local Government Commission, the audit is also to evaluate the performance of a local government unit with respect to compliance with applicable federal and State regulations. The financial and compliance audits are considered a single audit. Currently the State Auditor's Office approves the documents describing standards of compliance and suggested audit procedures that are provided to assist independent auditors with the conduct of the compliance portion of the audit. S.L. 2001-160 amends G.S. 159-34 to transfer the authority to approve these documents from the State Auditor's Office to the Local Government Commission.

The act became effective May 31, 2001. (BR)

## Financial Oversight for Housing Authorities

S.L. 2001-206 (SB 1056) clarifies the applicability of the Local Government Budget and Fiscal Control Act to housing authorities not operated as a department of a county or municipality. The statutes are amended to add a new part to Article 3 of Chapter 159 exempting such housing authorities from the Local Government Budget and Fiscal Control Act, but requiring those same housing authorities to comply with similar provisions as set forth in the new part. Generally, it requires:

- An annual operating budget, adopted after a public hearing.
- Projects that span more than one fiscal year are to be accounted for in a separate budget (project ordinance).
- Appointing a finance officer, who is responsible for preparation and administration of the budget.
- Compliance with federal rules and regulations with respect to accounting for appropriations from the U.S. Department of Housing and Urban Development.
- Annual audit, with a copy filed with the Local Government Commission.
- Bonding of employees regularly handling over \$100.00 or with access to the inventories of the housing authority.
- Investments are permissible.
- Selection of an official depository and required daily deposits.
- Acceptance of electronic payments is permitted.

The act would also relieve a housing authority from seeking Local Government Commission approval prior to entering into a financing agreement or other financing arrangement when the agreement is for an amount equal to the lesser of:

- \$500,000.
- A sum equal to \$2,000 per housing unit owned and under active management by the housing authority.

The act became effective June 15, 2001, and applies to fiscal years beginning on or after October 1, 2001. (EC)

## **County Building Code Revisions**

S.L. 2001-219 (SB 342) authorizes certain counties, notwithstanding the State Building Code or any public or local law, to adopt ordinances establishing requirements for bathroom facilities in buildings that are used primarily for outdoor school sporting events. Specifically, the act would allow counties to adopt ordinances establishing the number of toilets required in these facilities. The act only applies to counties that have a population of 190,000 or more and border both a county with a population of 650,000 or more and another state. As of the act's effective date, Gaston County was the only county satisfying the applicability requirement.

The act became effective June 15, 2001. (FF)

## **Sanitary District Economic Development**

S.L. 2001-221 (HB 235) authorizes sanitary districts to enter into agreements with municipal corporations or other sanitary districts for the purpose of developing and implementing an economic development plan. Sanitary districts are currently granted the authority to exercise numerous corporate and governmental powers conferred on them by the General Assembly. However, they were not specifically provided explicit powers to enter into joint agreements for the purpose of developing and implementing an economic development plan. S.L. 2001-221 provides the explicit authority for this, and allows as a part of the agreement, the establishment of a non-reverting special fund in which the sanitary district can transfer money to municipal corporations or other sanitary districts.

The act became effective June 15, 2001. (EC)

## **Water and Sewer Authorities**

S.L. 2001-224 (SB 432), amending G.S. 162A-3, G.S. 162A-3.1, and G.S. 162A-5(a), allows three or more political subdivisions to partner with up to two nonprofit water corporations to form a water and sewer authority. This act also validates the membership of nonprofit water corporations in an authority if the authority was created after July 1, 2000, and meets the requirements of this act.

The act became effective June 15, 2001. (KC)

## **Special Obligation Bonds for Water/Sewer**

S.L. 2001-238 (SB 123). See **Taxation**.

## **Municipal ETJ Road Improvements**

S.L. 2001-261 (SB 408) authorizes a city with a population of 250,000 or more to make roadway improvements in its extraterritorial planning and zoning jurisdiction. Before making any improvements authorized by this act, the city must enter into a memorandum of understanding with the Department of Transportation concerning maintenance of the improvements.

The act became effective July 4, 2001. (GSP)

## **Make Meals Tax Penalties Uniform**

S.L. 2001-264 (HB 1448). See **Taxation**.

## **Building Inspections Contracted**

S.L. 2001-278 (HB 598), amending G.S. 153A-353 and G.S. 160A-413, removes the limitation that cities and counties may only contract with private building inspectors for building inspection services for specifically designated projects.

The act became effective October 1, 2001. (KC)

## **Red Light Cameras/Certain Municipalities**

S.L. 2001-286 (SB 243). See **Transportation**.

## **Soil and Water Employee Judgments**

S.L. 2001-300 (HB 968) adds soil and water conservation supervisors and employees to the individuals for whom a local government may provide legal defense in a civil or criminal action brought against the employee for any act done or omission made in the scope and course of the person's duty or employment. The act authorizes the city or county to appropriate funds to pay for all or part of a claim or judgment entered against a soil and water conservation employee or official when the claim or judgment is rendered as damages for any act done or omission made in the scope and course of the person's duty or employment.

The act became effective July 21, 2001. (JH)

## **Sanitary District Satellite Annexation**

S.L. 2001-301 (HB 236) authorizes a sanitary district that has one or more municipalities within its boundaries to make a satellite annexation of territory if the municipality that lies within the district makes the same annexation.

The act became effective July 21, 2001. (GSP)

## **Amend Local Government Purchasing Laws**

S.L. 2001-328 (HB 1169) amends the local government purchasing laws in the following ways:

- Increases the formal bid threshold for contracts for the purchase of apparatus, supplies, materials, or equipment from \$30,000 to \$50,000.
- Authorizes the use of electronic advertisement of the letting of contracts at the option of the local government.
- Specifies proposals may be rejected for any reason determined by the governing board to be in the best interest of the governmental unit.
- Clarifies that the bids must be opened in public, and the board or governing body is to award the contract.
- Clarifies that the provisions authorizing the governing body to enter into negotiations when the lowest bids exceed the funds available apply to purchase contracts as well as construction contracts.

- Eliminates the bid bond, performance, and payment bond requirement for contracts for the purchase of apparatus, supplies, materials, or services in the formal bidding range.
- Reorganizes G.S. 143-129 so that the exemptions are listed in G.S. 143-129(e) instead of scattered throughout, and adds two new exemptions for purchases from State contracts when the same prices, terms, and conditions are extended to the local government and for purchases of used apparatus, supplies, materials, or equipment.
- Specifies that the provisions regarding withdrawal of bids apply to bids submitted for the purchase of apparatus, supplies, materials, or equipment as well as construction or repair work, and authorizes the bid requestor to allow a longer period than the current 72 hours within which a bidder must request withdrawal if a longer period is specified in the instructions provided to bidders prior to the opening of bids.
- Establishes a request for proposal procedure for information technology goods and services. This procedure could be used in addition to or instead of any other procedure available under North Carolina law.
- Authorizes a local government to discard property that has no value, that remains unsold after completion of a sale procedure, or that poses a potential threat to the public health or safety.
- Authorizes a local government to conduct an auction under G.S. 160A-270 by electronic means, either through the establishment of an electronic auction procedure or through the use of existing private or public electronic auction services.

The act became effective August 2, 2001. (EC)

## Unsafe Buildings

S.L. 2001-386 (SB 885) makes a series of technical corrections to the statutes applicable to demolition of nonresidential buildings enacted during the previous legislative session (S.L. 2000-164). Prior to 2000, the General Statutes authorized condemnation and removal of residential and nonresidential buildings for unsafe conditions. During the 2000 session, the General Assembly amended the General Statutes to authorize cities to condemn, demolish, and place a lien on vacant and dilapidated non-residential property in a community development target area. The changes made in S.L. 2000-164 contained language that unintentionally restricted the pre-2000 unsafe building law. The prior law applied to all buildings, but the 2000 change appeared to restrict that law to residential buildings.

This act makes a series of technical changes to G.S. 160A-426 and G.S. 160A-432 (regarding unsafe buildings) to clarify the changes made in S.L. 2000-164.

The act also extends to December 31, 2002 the deadline for Counties to sell any improvements on real property purchased through the Hazard Mitigation Grant Program related to Hurricane Floyd.

The sections of the act concerning unsafe buildings became effective August 26, 2001. The section of the act concerning the Hazard Mitigation Grant Program became effective July 31, 2001. (GSP)

## Satellite Annexations

S.L. 2001-438 (SB 210) amends Part 4 of Article 4 of Chapter 160A of the General Statutes providing for annexation by petition. In particular, the act amends G.S. 160A-58.1 and allows a city to annex a noncontiguous area that is closer to the city limits of another city than to its own if the annexing city has entered into an annexation agreement with the city that is closer to the area to be annexed and the agreement states that the closer city will not annex the area but does not say the annexing city will not annex the area.

The act became effective October 15, 2001. (BR)

## Extend Lien for Public Health Nuisance

S.L. 2001-448 (SB 352) amends three municipal statutes to broaden a city's authority to place a lien on real property owned by a person who fails to pay the expense for abating or removing a public nuisance.

G.S. 160A-193 (Abatement of public health nuisances) is amended to authorize a city to place a lien, not only on the land where the public nuisance occurred, but also on any other real property owned by the person who fails to pay for the abatement of the public nuisance on the person's property. This additional real property must be located within the city or within one mile of the city limits and may not be the person's primary residence. A lien on additional real property is inferior to all prior liens. A city may not place a lien on additional real property if the person who fails to pay for the abatement of the public nuisance can show that the nuisance was created solely by the actions of another.

G.S. 160A-432 (Enforcement of construction laws) is amended to authorize a city to place a lien, not only on the property from which the unsafe building or structure was removed, but also on any other real property owned by the owner of the unsafe building or structure. This additional real property must be located within the city or within one mile of the city limits and may not be the person's primary residence. A lien on additional real property is inferior to all prior liens.

G.S. 160A-443 (Ordinance for dwellings unfit for human habitation) is amended to provide that if the real property upon which the cost was incurred is in an incorporated city, then the city may also place a lien on the other real property owned by the owner of building or structure. This additional real property must be located within the city or within one mile of the city limits and may not be the person's primary residence. A lien on additional real property is inferior to all prior liens.

The act became effective October 20, 2001. (JH, FF)

## Discontinued Membership Service (LGERS)

S.L. 2001-435 (HB 943). See **Employment**.

## Studies

### Legislative Research Commission

#### The 2001 Studies Bill

S.L. 2001-491 (SB 166) authorizes the Legislative Research Commission to study:

- Clear cutting and development growth management in the city of Raleigh. (Sec. 2.1. (4)(b))
- Payment of costs incurred by constituent institutions of The University of North Carolina for municipal services. (Sec. 2.1. (10)(a))
- Tier 1 county core and essential public health services. (Sec. 2.1D.)

These sections became effective December 19, 2001. (EC)

## Referrals to Existing Commissions/Committees

### Joint Legislative Utility Review Committee

S.L. 2001-491, Secs. 30.1-30.2 (SB 166, Secs. 30.1-30.2) authorizes the Joint Legislative Utility Review Committee to study:

- Clarifying and expanding the allowed uses of the money in emergency telephone system funds and making other statutory changes for the purpose of expanding the use of telecommunications systems for public safety purposes.
- Requiring reductions in the emissions of certain pollutants from certain facilities that burn coal to generate electricity.

The Joint Legislative Utility Review Committee is authorized to report its findings and recommendations to the 2002 Regular Session of the 2001 General Assembly and to the 2003 General Assembly.

These sections became effective December 19, 2001. (EC)

*Chapter 15*  
*Property, Trusts, and Estates*

Karen Cochran-Brown (KCB), Esther Manheimer (EM), Wendy Graf Ray (WGR),  
Walker Reagan (WR), Steve Rose (SR), Rick Zechini (RZ)  
and others (See references by initials on page 269 of this publication.)

## Enacted Legislation

### Property

#### Penalty for Filing False Statutory Lien

S.L. 2001-495 (SB 912) prohibits the clerk of superior court from indexing, docketing, or recording a claim of lien in a way that would affect the title to any real property, if it does not appear that the filing is authorized by statute. This act does allow the clerk to accept, for filing only, documents that do not meet the criteria for indexing, docketing, or recording.

This act also provides a penalty for any person who files or attempts to file a lien with knowledge that it is not authorized by statute, or when the filing is made for an improper purpose. Violation of this provision is a Class 1 misdemeanor.

This act became effective January 1, 2002, and applies to offenses committed on or after that date. (WGR)

#### Amend Use Value Statutes

S.L. 2001-499 (HB 1427). See **Taxation**.

#### Public Right-of-Way Declaration

S.L. 2001-501 (SB 1038) authorizes private landowners to initiate a special proceeding to establish the existence of a right-of-way open to the public in the following limited circumstances:

- The owners of 2/3 of the lots abutting the right-of-way join in the action;
- The right-of-way is depicted on an unrecorded map, plat, or survey;
- The right-of-way has actually been open for public use; and
- At least three deeds recite the existence of the right-of-way.

If all of the requirements are proven, the clerk of superior court must issue an order declaring the right-of-way dedicated to public use. This act also provides that if the clerk finds the right-of-way was dedicated to public use, and the Department of Transportation (DOT) is subsequently asked to add the road to the State road system for maintenance, the road must first be improved to meet the State minimum standards.

This act also directs DOT to condemn right-of-way needed for a secondary road paving or maintenance project if DOT has attempted to negotiate the acquisition for up to six months, 75% or more of the property owners adjacent to the project have provided the necessary right-of-way, and the adjacent property owners have provided funds required by DOT rule to cover the condemnation costs.

The act became effective December 19, 2001. (WGR)



## Certain Manufactured Homes Real Property

S.L. 2001-506 (HB 253) amends Chapter 105 (Revenue Laws) so that the definition of "real property" in the property tax laws will include certain single section (was multiple section) manufactured homes, making the determination of whether a manufactured home is real or personal property uniform. The act clarifies that a manufactured home is considered tangible personal property if the moving hitch, wheels, and axles are still intact, and the home has not been placed on a permanent foundation on land owned by the owner of the home.

The act also amends Chapter 20 (Motor Vehicles) by codifying the current policy of the Division of Motor Vehicles to require an owner of a manufactured home to submit an affidavit and surrender the certificate of title to DMV when the manufactured home becomes real property under Chapter 105. After canceling the title, DMV must return the original affidavit to the owner. The owner must then file the affidavit with the register of deeds where the owner's real property is located. The act also provides for a procedure to apply for a new certificate of title if the owner later seeks to remove the manufactured home from the real property. A violation of this section is a civil penalty of up to \$100 to be imposed in the discretion of the Commissioner of Motor Vehicles.

The act also amends Chapter 47 (Probate and Registration) to require an owner of real property who has surrendered title to a manufactured home under Chapter 20, to file the returned affidavit with the office of the register of deeds. Once this affidavit is recorded, the manufactured home is considered an improvement to real property, and all existing liens on the real property are considered to include the manufactured home. It also amends Chapter 47 to allow the owner of real property on which an untitled manufactured home has been or will be placed to file a declaration of intent to place a manufactured home on his or her property and to convey or encumber the real property, including the manufactured home.

The amendments to Chapter 105 are effective for taxable years beginning on or after July 1, 2002. The portions of the act relating to Chapter 20 and Chapter 47 became effective January 1, 2002, and apply to manufactured home title cancellations and to declarations of intent, deeds, deeds of trust, and other instruments recorded after that date. The remainder of the act became effective December 19, 2001. (SR)

## Trusts

### Interstate Trust Business

S.L. 2001-263 (SB 860). See **Commercial Law**.

### Trustees and Estate Law Changes

S.L. 2001-413, Parts I-IV (HB 1070, Parts I-IV) rewrite Article 3 of Chapter 36A regarding the resignation and removal of trustees and make changes in the law affecting fiduciaries and decedents' estates.

Part I of the act, which addresses the resignation and removal of trustees, does the following:

- It expands the jurisdiction of the clerk of court over proceedings regarding the removal and resignation of trustees to all matters concerning the internal affairs of a trust. Previously, the clerk of superior court's jurisdiction over these matters was subject to approval by a superior court judge. The internal affairs of a trust include:
  - Appointing or removing a trustee
  - Reviewing trustees' fees
  - Reviewing and settling interim or final accounts

- Ascertaining beneficiaries
- Addressing questions regarding the administration/distribution of the trust, the construction of the trust, and determining whether a trust exists (other than trusts created by a will).
- It mandates that the venue for trust administration proceedings be in the county where accountings are filed, if the trustee is required to account to the clerk. If no accounting is required, then venue is proper in the county where the principal place of administration of the trust is located or where any beneficiary resides.
- It makes all known beneficiaries and trustees respondents in a trust proceeding. Under prior law, the trustee was the plaintiff and the beneficiaries were the respondents.
- It repeals the provisions that prohibited a trustee from resigning until a final accounting was filed with the clerk and the clerk found it to be true and correct. Under this act, once the accounting is accepted as true and correct, the trustee is released even if a successor trustee has not been appointed.
- It eliminates the bond requirement to secure performance of the trustee's duties unless the trust requires it or the clerk finds that a bond is necessary to protect the interests of the beneficiaries.
- It authorizes the clerk to appoint a successor trustee, upon his or her own motion, in the event that the current trustee is deceased or incapacitated.

Parts II-IV of the act, which relate to the laws governing fiduciaries and decedents' estates, make the following changes:

- They authorize a personal representative to institute a single special proceeding before the clerk of superior court for both the sale and possession of real property. Under prior law, a personal representative had to institute two separate proceedings.
- They provide that the person authorized to distribute property to the trust may distribute property directly to the persons entitled to it if the trust would be inoperative under the terms of the instrument creating it. This authority to distribute property is available if any terms of the trust are inoperative for any reason, including:
  - Death of or renunciation by a beneficiary.
  - Withdrawal of property by a beneficiary.
  - Attainment of stipulated age by a beneficiary.
- They provide that if an instrument excludes a particular fiduciary from the authority to make investment decisions and the fiduciary has no discretion in selecting the person authorized to make investment decisions, then that fiduciary is not liable to the beneficiaries or the trust for the decisions or actions of those authorized to make investment decisions. An "instrument" includes a will, an agreement, or a court order that creates or defines a fiduciary's powers and duties.

Part I of this act became effective January 1, 2002 and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established before, on or after that date. Parts II-IV became effective September 14, 2001 and apply to actions by personal representatives on or after that date. (TG)

## Estates

### Amend Anti-Lapse Statute

S.L. 2001-83 (HB 182) amends the will probate anti-lapse statute to clarify that surviving class members and descendants of other predeceased class members take the share of a class member who has no descendants and who predeceases the testator. The act amends G.S. 31-42(a) to add back language that existed in the law prior to 1999, but which was not included when the statute was rewritten in 1999. The effect of this act will be to insure distribution of bequests to

surviving class members and to prevent distribution of the deceased class member's share as part of the residuary of the estate.

The act became effective May 17, 2001 when the act became law and applies to estates of decedents who die on or after that date. (WR)

## Trustees and Estate Law Changes

S.L. 2001-413, Parts I-IV (HB 1070, Parts I-IV). See **Trusts** under this Chapter.

## Major Pending Legislation

### Securities Transfer on Death

HB 41 would amend Chapter 41, Estates, to allow owners of securities to register their title in transfer-on-death (TOD) form. This would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. The bill is a recommendation of the General Statutes Commission and is modeled after the Uniform Transfer on Death (TOD) Securities Registration Act. The Uniform Act has been adopted in at least 46 other states.

This bill passed the House and was reported favorably by the Senate Commerce Committee. After discussion on the floor of the Senate concerning the possible fiscal impact from the reduction in probate fees that would result from the bill, the bill was rereferred to Senate Commerce.

Similar bills were introduced in the 1997 and 1999 Sessions of the General Assembly. In 1999, House Bill 112, which was virtually identical to this bill, passed the House and was given a favorable report by the Senate Commerce Committee. (WR)

### Estate Law Changes

HB 716 would make various changes in the law of fiduciaries and decedent's estates. Part I would make various changes in the law regarding the authority of a personal representative to take possession of and sell real property owned by the decedent. The bill proposes to clarify that the personal representative's general authority to sell real property applies notwithstanding an express devise of real property as a general or residuary devise.

Parts II-V of HB 716, regarding distribution of assets of an inoperative trust, liability of a fiduciary excluded from investment decisions for decisions made by those authorized to make investment decisions, and statutory cross-references to the Internal Revenue Code, were incorporated into and enacted as Parts II-IV of S.L. 2001-413 (HB 1070, Parts II-IV), which is summarized under **Trusts** in this chapter. House Bill 716 is pending in the Senate Judiciary I Committee. (WR)

## Chapter 16 Redistricting

Erika Churchill (EC), Karen Cochrane-Brown (KCB), Kristen Crosson (KC),  
Bill Gilkeson (BG), Esther Manheimer (EM) and others  
(See references by initials on page 269 of this publication.)

### Enacted Legislation

After each federal decennial census, the General Assembly redraws the district lines for U.S. House of Representatives districts, N.C. State Senate districts, and N.C. State House of Representatives districts. The census was taken on April 1, 2000, and the results released in early 2001. The population of North Carolina grew approximately 21.4% between 1990 and 2000; meaning North Carolina received an additional representative in the U.S. House of Representatives. The Census also revealed that the population growth in North Carolina was uneven, some counties grew by up to 50% and one county actually lost population. The growth and redistribution of people across the State resulted in the redrawing of the district lines by the General Assembly for the U.S. House of Representatives, N.C. Senate, and N.C. House of Representatives. The changes are briefly outlined in the tables below. Maps and detailed information are available from the Research Division, and on the General Assembly website (<http://www.ncleg.net/Redistricting/>).

All three plans must be precleared by the United States Department of Justice, due to the fact the redrawn lines affect elections in the 40 counties in North Carolina covered by the Voting Rights Act, before the plans may be used in an election. (EC)

### **Congressional Redistricting**

S.L. 2001-479 (HB 32)

	<b>1997 Ratified Congressional Plan</b>	<b>S.L. 2001-479 (HB 32)</b>
No. of Districts	12	13
Ideal District Population	552,386	619,178
No. of 2 member districts	0	0
No. of Minority Plurality Districts	2	2
No. of Split Counties	22	28
No. of Split Precincts	N/A	22

### **Senate Redistricting**

S.L. 2001-458 (SB 798)

	<b>1992 Ratified Senate Plan</b>	<b>S.L. 2001-458 (SB 798)</b>
No. of Districts	42	46
Ideal District Population	132,573	160,986
No. of 2 member districts	8	4
No. of Minority Plurality Districts	5	4
No. of Split Counties	40	51
No. of Split Precincts	N/A	8

## House Redistricting

S.L. 2001-459 (HB 1025)

	<b>1992 Ratified House Plan</b>	<b>S.L. 2001-459 (HB 1025)</b>
No. of Districts	98	112
Ideal District Population	55,239	67,078
No. of 2 member districts	12	6
No. of 3 member districts	5	1
No. of Minority Plurality Districts	14	15
No. of Split Counties	60	70
No. of Split Precincts	N/A	102

Chapter 17  
Resolutions

**Joint Resolutions**

**Honoring Founders/Biscoe/Centennial Anniversary**

Res. 2001-01 (SJR 19)

**Invite Governor/Address Joint Session**

Res. 2001-02 (SJR 128)

**Honoring Town of Angier's Founders**

Res. 2001-03 (HJR 273)

**Honoring the Buffalo Soldiers**

Res. 2001-04 (HJR 139)

**Election of Community College Board Members**

Res. 2001-05 (HJR 228)

**Inviting Chief Justice Lake**

Res. 2001-06 (HJR 376)

**Confirmation of Lorinzo Little**

Res. 2001-07 (HJR 481)

**Honoring Past G.A. and First Tryon Palace Comm.**

Res. 2001-08 (HJR 1034)

**Honoring Developers of the Elizabethan Gardens**

Res. 2001-09 (HJR 701)

## **Honoring Macclesfield's Founders**

Res. 2001-10 (HJR 652)

## **Honoring Founders of Raeford/100<sup>th</sup> Anniversary**

Res. 2001-11 (SJR 689)

## **Honoring Memory of Herman Harley "Bull" West**

Res. 2001-12 (SJR 770)

## **Appointment to State Board of Education**

Res. 2001-13 (HJR 1161)

## **Congratulating Fort Bragg, Camp Lejeune & Seymour**

Res. 2001-14 (HJR 1163)

## **Honoring Charles Calloway 'C.C.' Ross**

Res. 2001-15 (HJR 758)

## **Confirmation Utility Commission Appointments/Executive Director**

Res. 2001-16 (SJR 1101)

## **State Board of Education Confirmation**

Res. 2001-17 (HJR 990)

## **State Nature and Historic Preserve Properties**

Res. 2001-18 (SJR 853)

## **Honoring Memory of Coble Funderburk**

Res. 2001-19 (SJR 585)

## **Honoring Memory of Richard Clark**

Res. 2001-20 (SJR 707)

## **Honoring Victims of Imperial Food Products Fire**

Res. 2001-21 (HJR 663)

## **Confirmation/Robert Powell/State Controller**

Res. 2001-22 (SJR 362)

## **Honoring the Life and Memory of Dale Earnhardt**

Res. 2001-23 (HJR 270)

## **Honoring the Life and Memory of Jacob Wilbert Forbes**

Res. 2001-24 (HJR 1461)

## **Honoring Jackson County's Founders**

Res. 2001-25 (HJR 1460)

## **Honoring Memory of Wilver Dornell Stargell**

Res. 2001-26 (HJR 1456)

## **Honoring Memory of John Thomas/Town of Thomasville**

Res. 2001-27 (SJR 1103)

## **Honoring Richardson and Emily Preyer**

Res. 2001-28 (SJR 475)

## **Honoring Joseph Wayne Grimsley**

Res. 2001-29 (HJR 1463)



## **Honoring Founders Town of Wingate/100<sup>th</sup> Anniversary**

Res. 2001-30 (SJR 1102)

## **Honoring the Life and Memory of Neill Mckay Ross**

Res. 2001-31 (HJR 467)

## **Honoring the Reverend David Wells Hansley**

Res. 2001-32 (HJR 1465)

## **Honoring the Life and Memory of Henry Evans**

Res. 2001-33 (SJR 359)

## **Honoring John Lawson**

Res. 2001-34 (HJR 833)

## **Honoring George Henry White**

Res. 2001-35 (HJR 60)

## **Adjournment 2001**

Res. 2001-36 (SJR 1109)

## Simple Resolutions

### **House Rules**

(HR 49)

### **Nominating UNC Board of Governors**

(HR 542)

### **Honoring Lindsey Guy Dewitt**

(HR 816)

### **Honoring Ira T. Hardison and John F. McNair**

(HR 1455)

### **Electing Members of State Board of Community Colleges**

(HR 1457)

### **Honoring Joseph Hewes, William Hooper, & John Penn.**

(HR 1458)

### **Permanent Rules 2001 Session**

(SR 1)

### **Electing UNC Board of Governors**

(SR 103)

### **Nominating/Electing At-Large Member/Board of Governors**

(SR 267)

### **Honor Americans/2001 Terrorist Attack**

(SR 1105)

## Chapter 18 Senior Citizens

Linda Attarian (LA), Dianna Jessup (DJ), Theresa Matula (TM)  
and others (See references by initials on page 269 of this publication.)

### Enacted Legislation

#### **Institutional Services**

##### **Retirement Home Tax Change**

S.L. 2001-17 (HB 193). See **Taxation**.

##### **Long-term care/Post Staffing**

S.L. 2001-85 (HB 736), as amended by S.L. 2001-487, Sec. 85 (HB 338, Sec. 85) requires adult care homes and nursing homes to post staffing information in a conspicuous place so that residents and their families can determine the numbers and level of staff that are required by law to be on duty for each shift each day.

The act became effective October 1, 2001. (DJ)

##### **Cost Reports-Special Care Units**

S.L. 2001-157 (HB 958) requires an adult care home that has a special care unit to include in its cost reports those costs specific to the special care unit. By May 1, 2001, DHHS shall report to the General Assembly on the cost reports and the development of a designated reimbursement system for residents residing in special care units in adult care homes.

The act became effective May 31, 2001. (DJ)

##### **C.O.N. – Adult Care Homes Regulated**

S.L. 2001-234 (SB 937) adds adult care homes with seven or more beds to the types of new health care facilities that are subject to certificate of need review pursuant to Article 9 of Chapter 131E. The act extends the current moratorium on building new adult care beds from September 30, 2001 to December 31, 2001 and establishes a timetable that holders of exemptions to the moratorium must meet in order to preserve their rights to build new beds pursuant to the exemptions. See **Studies Section** below for further provisions in this act.

The sections of this act that amend the certificate of need laws became effective January 1, 2002 and the remainder of the act became effective June 21, 2001. (LA)

##### **Long-Term Care Facil./Quality of Care**

S.L. 2001-385 (HB 1068) directs the Department of Health and Human Services to study long-term care issues and to establish quality improvement consultation programs. Specific requirements of the Department of Health and Human Services include: offer training based on one

or more of the 10 deficiencies cited most frequently, develop an Adult Care Home Quality Improvement Consultation Program, establish a Skilled Nursing Facility Quality Improvement Consultation Project, convene a Skilled Nursing Facility Quality of Standards Work Group. See **Studies Section** below for further provisions in this act.

The Department is required to report on status of the various activities on October 1, 2002 and/or March 1, 2002 to the Study Commission on Aging, and in some cases to the Joint Legislative Health Care Oversight Committee, and the House/Senate Appropriations Subcommittees on Health and Human Services.

The act became effective July 1, 2001. (TM)

## **Adult Care Home Reimbursement Rates Implementation Plan**

S.L. 2001-424, Sec. 21.7 (SB 1005, Sec. 21.7) directs the Department of Health and Human Services to consider all findings and recommendations from the performance audit report, "Adult Care Home Reimbursement Rates." The Department shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than April 1, 2002 on the implementation of specified recommendations. The Department may not implement an alternative payment procedure until it is approved by the General Assembly.

In consultation with the Department, the Fiscal Research Division may issue a Request for Proposal (RFP) for a consultant to develop a new rate methodology for reimbursing adult care homes. The independent consultant shall make a final report to the General Assembly not later than June 1, 2002.

The act became effective July 1, 2001. (TM)

## **Special Assistance Demonstration Project**

S.L. 2001-424, Sec. 21.29.(a) (SB 1005, Sec. 21.29.(a)) amends Section 11.21 of S.L. 1999-237, as amended by Section 11.13 of S.L. 2000-67. The Department of Health and Human Services is authorized to use funds from the existing State/County Special Assistance for Adults budget to provide Special Assistance payments to eligible individuals in in-home living arrangements. Originally, these payments may have been made for up to 400 individuals and for up to a two-year period beginning July 1, 2000, and ending June 30, 2002. The change allows an individual enrolled in the Special Assistance demonstration project on June 30, 2002, who remains continuously eligible, to receive payments through June 30, 2003. The standard monthly payment to individuals enrolled in the Special Assistance demonstration project shall be fifty percent (50%) of the monthly payment the individual would receive if the individual resided in an adult care home and qualified for Special Assistance, except if a lesser payment amount is appropriate for the individual as determined by the local case manager. The change also requires the Department to implement Special Assistance in-home eligibility policies and procedures to assure participants are those individuals who need and seek placement in an adult care home facility.

Reporting requirements were also modified. In addition to items previously specified, the Department's report shall include a comparison of the level and quantity of services (including personal care services) provided to the demonstration project participants and to the residents in adult care homes as well as a fiscal analysis and programmatic results of increasing the demonstration project participant's monthly assistance payment. The final report is due to the cochairs of the House of Representatives Appropriations Committee, the cochairs of the House of Representatives Appropriations Subcommittee on Health and Human Services and the cochairs of the Senate Appropriations Committee, the Chair of the Senate Appropriations Committee on Human Resources by January 1, 2003. The Department is also required to incorporate data collection tools to compare the quality of life among institutionalized vs. noninstitutionalized populations and to expand its report of the Demonstration Program to fully assess the success of the pilot. The

Department is required to contract with an independent consultant to develop an evaluation design that ensures the evaluation includes an assessment of the impact of the Program on the participant's economic security, health, and well being.

The act became effective July 1, 2001. (TM)

## **Adult Care Home Resident Data and Assessment Services**

S.L. 2001-424, Sec. 21.35 (SB 1005, Sec. 21.35) requires that funds appropriated to the Department of Health and Human Services, Division of Social Services, for adult care home positions in the Department and in county departments of social services shall be used for personnel trained in the medical and social needs of older adults and disabled persons in adult care homes to evaluate individuals requesting State/County Special Assistance to pay for care in adult care homes. These personnel shall develop and collect data on the appropriate level of care and placement in the long-term care system, including identifying individuals who pose a risk to other residents and who may need further mental health assessment and treatment. Additionally, they shall provide technical assistance to adult care homes on how to conduct functional assessments and develop care plans and shall assist in monitoring the Special Assistance Demonstration Project.

The act became effective July 1, 2001. (TM)

## **Quality Criteria for Long-Term Care**

S.L. 2001-424, Sec. 21.36 (SB 1005, Sec. 21.36) requires the Department of Health and Human Services, in conjunction with the North Carolina Institute of Medicine, to continue a special work group to develop criterion-based indicators for the monitoring of quality of care in North Carolina nursing homes, adult care homes, assisted living facilities, and home health care programs. The Institute of Medicine and the Department of Health and Human Services shall work together to implement these criteria for the monitoring of long-term care in the State and pursue options for the use of these criteria in lieu of current HCFA-mandated standards for surveying North Carolina nursing homes under the federal Medicaid and Medicare programs.

The act became effective July 1, 2001. (TM)

## **State/County Special Assistance**

S.L. 2001-424, Sec. 21.44 (SB 1005, Sec. 21.44) specifies that the eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, provided these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand two hundred thirty-one dollars (\$1,231) per month per resident. The maximum monthly rate for residents in adult care home facilities shall be one thousand sixty-two dollars (\$1,062) per month per resident through September 30, 2001.

Effective October 1, 2001, the maximum monthly rate for residents in adult care home facilities shall be one thousand ninety-one dollars (\$1,091) per month per resident.

Effective October 1, 2002, the maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred twenty dollars (\$1,120) per month per resident.

The act became effective July 1, 2001. (TM)

## **Adult Care Home Model for Community-Based Services**

S.L. 2001-424, Sec. 21.54 (SB 1005, Sec. 21.54). See **Health and Human Services**.

## **Criminal Record Check Change/Long-Term Care**

S.L. 2001-465 (SB 826) amends current law by temporarily suspending the requirement that nursing homes, adult care homes, home care agencies, hospice agencies, and area mental health authorities (and their contract agencies) condition employment of unlicensed applicants for positions *not* involving direct patient care upon the applicant's consent to a national criminal background check. However, the act retains the requirement that nursing homes and home care agencies condition employment of unlicensed applicants for positions involving direct patient care upon the applicant's consent to a national criminal history background check. These national checks must be requested in accordance to P.L. 105-277. All other requirements, including the requirement of conditioning employment upon the applicant's consent to a State criminal history check, are not changed and continue to be in effect. This section sunsets on January 1, 2002.

The act became effective November 16, 2001. See **Studies Section** below for further provisions in this act. (LA)

## **Adult Care Home Assessment**

S.L. 2001-482 (SB 178) directs the Department of Health and Human Services to develop an instrument for assessing the quality of care provided by adult care homes. The Department shall consult with industry representatives, advocacy and research organizations and consumers in developing an instrument that shall address discreet areas of care, services, and physical plant amenities and conditions. The Department shall report to the North Carolina Study Commission on Aging on or before April 1, 2002, and if a pilot test is conducted they shall report not later than November 1, 2002.

The act became effective December 6, 2001. (TM)

## **Community Services**

### **Adult Day Care Transportation**

S.L. 2001-90 (HB 329) amends G.S. 131D-6(b) to specify that adult day care programs may provide, but are not required to provide transportation to participants. Those programs that elect to provide transportation services to participants must comply with the rules adopted by the Social Services Commission.

The act became effective October 1, 2001. (TM)

### **Senior Center Outreach**

S.L. 2001-424, Sec. 21.30 (SB 1005, Sec. 21.30) requires that funds appropriated to the Department of Health and Human Services, Division of Aging for the 2001-2003 fiscal biennium shall be used to expand the outreach capacity of senior centers to reach unserved or underserved areas; or to provide start-up funds for new senior centers. Prior to the allocation of funds for a new center, county commissioners must formally endorse the need for a center, agree on the sponsoring agency, and make a formal commitment to use local funds to support the ongoing operation of the center. State funding shall not exceed ninety percent (90%) of reimbursable costs.

The act became effective July 1, 2001. (TM)

## **State Adult Day Care Fund**

S.L. 2001-424, Sec. 21.47 (SB 1005, Sec. 21.47) requires the Department of Health and Human Services, Division of Aging, to implement changes in the methodology currently used for allocating slots. The allocation of all slots paid for with State Adult Day Care Funds shall be distributed equitably among service providers and eliminate the funding of unused slots. The new allocation shall be implemented January 1, 2002 and ensure the Fund will serve new clients. The Division shall report on the new allocation methodology by January 1, 2002 to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division.

The act became effective July 1, 2001. (TM)

## **Other**

### **Grandparents As Supervising Drivers**

S.L. 2001-194 (HB 78). See **Transportation**.

### **Homestead Property Tax Relief for Elderly and Disabled Homeowners**

S.L. 2001-308 (HB 42). See **Taxation**.

### **Medicare Supplement and Long-Term Care Insurance**

S.L. 2001-334, Parts X. and XI (HB 360, Parts X. and XI). See **Insurance**.

### **Prescription Drug Assistance Program Management**

S.L. 2001-424, Sec. 21.3 (SB 1005, Sec. 21.3). See **Health and Human Services**.

### **Coordination of Access to Pharmaceutical Company Prescription Drug Programs**

S.L. 2001-424, Sec. 21.6 (SB 1005, Sec. 21.6). See **Health and Human Services**.

### **Long-Term Care Continuum**

S.L. 2001-424, Sec. 21.9 (SB 1005, Sec. 21.9) directs the Department of Health and Human Services, in cooperation with other appropriate State and local agencies and representatives of consumer and provider organizations, to develop a system that provides a continuum of long-term care for elderly and disabled individuals and their families. The system shall include: a structure for screening, assessment and care management across settings of care; a process to determine outcome measures for care; an integrated data system; relationships between the Department and universities for policy analysis, program evaluation and reform; an implementation plan to achieve a coordinated system; and a provision for input into system design and implementation development.

Subject to availability of non-State funds and approval of State Budget and Management, the Department may implement the initial phase of a long-term care data system and develop a statewide system of long-term care services coordination and case management. Not later than April 15, 2002, the Department shall submit a progress report on the development of the system to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the North Carolina Study Commission on Aging.

The act became effective July 1, 2001. (TM)

## **Medicaid Waiver for Medical Assistance to Individuals Living in Own Home and Receiving Supplemental State/County Special Assistance**

S.L. 2001-424, Sec. 21.29.(b) (SB 1005, Sec. 21.29.(b)) directs the Department of Health and Human Services to apply for a Section 1115 Medicaid Waiver to provide medical assistance to individuals living in their own home who are receiving supplemental State/County special assistance payments on a pilot basis rather than statewide. Individuals eligible for supplemental payments under the waiver shall be those individuals whose income exceeds one hundred percent (100%) of the federal poverty level and who would otherwise qualify for State/County Special Assistance as a resident of an adult care home. The waiver shall be designed to enable eligible recipients to remain at home, to receive the same payment amount as adult care home residents receiving State/County Special Assistance, and to qualify for Medicaid. If the waiver is granted, the Department shall not implement the waiver unless the implementation is approved and enacted by the General Assembly and funds are appropriated for that purpose. The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services on December 1, 2001, and March 1, 2002 on the status of the waiver and the amount of funds needed to implement the waiver

The act became effective July 1, 2001. (TM)

## **Division of Aging Consolidation of Sections**

S.L. 2001-424, Sec. 21.33 (SB 1005, Sec. 21.33) directs the Department of Health and Human Services, Division of Aging, to reduce layers of management and streamline operations by consolidating the Planning and Information and the Budget and Information sections. The Department shall allocate savings in non-State funds realized from the reduction in positions to direct services such as Ombudsman services, home delivered meals, and personal care services giving priority to those direct services for which there are clients waiting.

The act became effective July 1, 2001. (TM)

## **Prescription Drug Initiatives Grant**

S.L. 2001-424, Sec. 21.100 (SB 1005, Sec. 21.100). See **Health and Human Services**.

## **Advance Health Care Directives Registry**

S.L. 2001-455 (HB 1362). See **Health and Human Services**.



## Studies

### Legislative Research Commission

#### Criminal Record Check Change/Long-Term Care

S.L. 2001-465 (SB 826) authorizes the Legislative Research Commission (LRC) to study how federal law affects the distribution of national criminal history check information for the long-term care industry. The LRC may make its report to the 2001 General Assembly, Regular Session 2002.

The act became effective November 16, 2001. (LA)

#### Referrals to Departments, Agencies, Etc.

#### Population-Based Planning Methodology for CON - Adult Care Homes

S.L. 2001-234 (SB 937) directs the Department of Health and Human Services to study and make recommendations regarding the State Medical Facilities Planning methodology that would be necessary to delineate the various populations currently being served in adult care homes according to the needs of those populations. The Department is to make its report to the State Health Care Coordinating Council not later than May 1, 2002.

This section became effective June 21, 2001. (LA)

#### Long Term Care Issues

S.L. 2001-385 (HB 1068) requires the Department of Health and Human Services (DHHS) to study certain issues regarding long-term care. DHHS is required to explore methods to improve and reward quality of care provided by adult care homes, study the cost to the State of reducing the county share of State/County Special Assistance, study alternative ways to reimburse adult care homes for the costs of residents residing in special care units, study and make recommendations on statutory changes necessary to delineate various populations in adult care homes. The act also directs DHHS to develop certain programs. See **Institutional Services Section** for further provisions in this act. DHHS shall report its findings to the Study Commission on Aging, and in some cases to the Joint Legislative Health Care Oversight Committee, and the House/Senate Appropriations Subcommittees on Health and Human Services.

The act became effective July 1, 2001. (DJ)

#### Area Agencies On Aging-Reduction in Number of Agencies and Cost Savings Study

S.L. 2001-424, Sec. 21.32.(a) (SB 1005, Sec. 21.32.(a)) requires the Department of Health and Human Services to conduct a study to determine cost savings to be realized and increased efficiencies to be gained by reducing the number of Area Agencies on Aging. The Department shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2002.

The act became effective July 1, 2001. (TM)

## **Local Lead Agencies to Organize Long-Term Care Planning**

S.L. 2001-491, Part XXII (SB 166, Part XXII) directs the Division of Aging in the Department of Health and Human Services to study whether counties should designate local lead agencies to organize a local long-term care planning process. The organization of local lead agencies was Recommendation #10 from The Institute of Medicine's Long-Term Care Task Force Interim Report and was a recommendation contained in the Study Commission on Aging's 2001 Report to the Governor and the 2001 General Assembly (HB 161, SB 166). The Department will report its findings and recommendations to the North Carolina Study Commission on Aging on or before the convening of the 2003 General Assembly.

The act became effective December 19, 2001. (TM)

## Chapter 19

### State Government

Erika Churchill (EC), Karen Cochrane-Brown (KCB), Frank Folger (FF), Trina Griffin (TG), Giles Perry (GP), Walker Reagan (WR), Barbara Riley (BR), and others (See references by initials on page 269 of his publication.)

## Enacted Legislation

### Agencies and Departments

#### Uniform Securities Regulation

S.L. 2001-126 (SB 310) amends the law regarding administrative proceedings conducted by the Secretary of State under the North Carolina Securities Act, Investment Advisor Act, and Commodities Act to provide that hearings on the Secretary's decisions are to be conducted within 20 days of receipt of request of a hearing, in accordance with the Administrative Procedures Act. The act authorizes the Secretary to appoint hearings officers to conduct these hearings. In addition, the act grants permanent authority to the Secretary to adopt temporary rules to implement the uniform Statement of Policies to promote uniformity in state securities regulations.

The act became effective May 25, 2001. (WR)

#### Require State Reports Double-Sided

S.L. 2001-144 (SB 264) requires that all reports published by State agencies be printed on both sides of the paper as long as no additional time, staff, equipment, or expense would be necessary to fulfill the requirement. The act also mandates that State publications of historical and enduring value be printed on alkaline paper.

The act became effective July 1, 2001. (BR)

#### Housing Finance Agency Bonds

S.L. 2001-181 (SB 311) allows the North Carolina Housing Finance Agency (Agency) to use additional forms of collateral for their repurchase agreement investments. This Agency is permitted by statute to invest in repurchase agreements to manage the cash flow for its bond program. Under prior law, the Agency could only invest in repurchase agreements that used direct obligations of the United States Government as collateral, including such high quality securities as Fannie Mae, Freddie Mac, and the Federal Home Loan Bank. This legislation adds the following to the list of acceptable repurchase agreement investments:

- Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
- Obligations of the State of North Carolina.
- Prime quality commercial paper bearing the highest rating of at least one nationally

recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.

- Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service, which rates the particular obligations.

The act became effective October 1, 2001. (TG)

## **HFA Bonds**

S.L. 2001-185 (SB 236) increases the amount of bonds the Housing Finance Agency can have outstanding from \$1.5 billion to \$3 billion. The North Carolina Housing Finance Agency (HFA) was created in 1969 for the purpose of providing residential housing for sale or rental to persons and families of low and moderate income. One of the ways the HFA assists low and moderate income people in financing homes is through a partnership with different lenders whereby the HFA agrees to purchase the loans made by the lender to qualified individuals at lower interest rates. The HFA has invested in more than 55,000 loans since its creation. It has about 15,000 loans outstanding at any given point in time. The average life of a HFA loan is seven to 10 years. Its delinquency rate is 2¼%, a percentage that is below the industry average.

The HFA obtains much of the money used to purchase these loans through the proceeds of tax-exempt bonds. The debt service on the bonds is fully paid from the principal and interest the HFA receives from the mortgage payments.

The HFA determines when a bond issuance is needed. To begin the process, the HFA must file a resolution with the Local Government Commission and the Commission, with the approval of the HFA, determines the best manner in which to sell the bonds and the best price at which to sell them. The total amount of bonds the HFA is authorized to have outstanding at any one time is \$1.5 billion. The HFA estimates that it will reach this cap within the next 2 years.

The act became effective June 7, 2001. (TG)

## **State Privacy Act**

S.L. 2001-256 (HB 998) enacts into State law the provisions of the federal Privacy Act of 1974 governing the disclosure of social security numbers. Under the federal Privacy Act of 1974, it is unlawful for any federal, state, or local government agency to deny any individual any right, benefit, or privilege provided by law because the individual refuses to disclose the individual's social security number unless the disclosure is (1) required by federal law, or (2) is required by a statute or regulation adopted prior to January 1, 1975. Federal law also provides that a federal, state, or local agency that requests an individual to disclose the individual's social security number must inform the individual whether the disclosure is mandatory or voluntary, under what authority the number is solicited, and what use will be made of the information.

The act became effective October 1, 2001. (TG)

## **Energy Conservation/Pilot Program**

S.L. 2001-415 (HB 1272) amends Article 3B of Chapter 143 of the General Statutes, Energy Conservation in Public Facilities, to require, instead of merely encourage, the use of life-cycle cost analyses in the design, construction, operation, maintenance and renovation of State facilities and in the purchase, operation and maintenance of equipment for State facilities. A life-cycle cost analysis

is an analytical technique that looks at the initial, maintenance and operational costs of a facility over its economic life. The analysis covers such items as the orientation of a building on its site, the number and type of windows, insulation, the thermal value of construction materials, occupancy and the operating conditions of the building including lighting, and other architectural features that affect energy consumption.

The act also directs the Department of Administration to implement a pilot program to review the use of the Triangle J Council of Governments' High Performance Guidelines in renovation and construction projects for State facilities. The Board of Governors of The University of North Carolina shall select four projects for assessing the use of the High Performance Guidelines and the State Board of Community Colleges and the Office of State Budget, Planning and Management shall select three projects.

The act became effective October 1, 2001. (BR)

## Limitations of Agency Legislative Liaison

S.L. 2001-424, Sec. 6.10 (SB 1005, Sec. 6.10) adds a new section to Chapter 120 of the General Statutes, providing that no principal State department may do either of the following:

- Use State funds to contract with persons not employed by the State to lobby the General Assembly.
- Register or designate more than 2 persons to lobby the General Assembly.

The provision also provides a definition of legislative liaison personnel, which is someone whose principal duties involve lobbying the General Assembly.

This section became effective July 1, 2001. (EC)

## Private License Plates on Publicly Owned Motor Vehicles

S.L. 2001-424, Sec. 6.14 (SB 1005, Sec. 6.14) repeals several sections of the existing law with regard to the marking of publicly owned motor vehicles and consolidates the provisions in a new section in Chapter 20. This legislation also makes several changes to the law by specifying when certain types of license tags can be used on certain law enforcement vehicles and by including definitions of the terms private license plate, confidential license plate, and fictitious license plate.

A private license plate looks like a license plate that would normally be issued to a private person and lacks any markings indicating that it is assigned to a publicly owned vehicle. The Commissioner of the Division of Motor Vehicles may issue private license plates to:

- Motor vehicles used by law enforcement agencies for transporting, apprehending, or arresting persons charged with violations of the laws.
- Motor vehicles used by a county for transporting day or residential facility clients of area mental health, developmental disabilities, and substance abuse authorities.

A confidential license plate looks like a license plate that would normally be issued to a private person, but the registration information is confidential and is not a matter of public record. The Commissioner shall, upon approval and request of the Director of the State Bureau of Investigation, issue confidential license plates to local, State, or federal law enforcement agencies and agents of the Internal Revenue Service, if the applying agency provides satisfactory evidence of the following:

- The plate is to be used on a publicly owned or leased vehicle used primarily for transporting, apprehending, or arresting persons charged with violating the laws;
- The use of the confidential plate is necessary to protect the personal safety of an officer or for placement on a vehicle used primarily for surveillance or undercover operations; and
- The application contains the signature of the head of the requesting agency.

As of January 1, 2002, all confidential license plates issued by the Division of Motor Vehicles were converted to private plates unless prior to that date, the agency requesting the maintenance of

a confidential file provided the Director of the State Bureau of Investigation with the information required by this law.

A fictitious license plate also looks like a license plate that would normally be issued to a private person and information about the law enforcement agency that actually owns the vehicle is confidential and is not a matter of public record. The Commissioner may also issue fictitious registration information in connection with these plates, including driver's licenses with assumed names and false or fictitious addresses. Upon approval by the Director of the State Bureau of Investigation, the Commissioner may issue fictitious license plates to law enforcement officers on special undercover assignments. The Director of the SBI must make a specific written finding that the request is justified and necessary. A fictitious plate will expire six months after its issuance unless the Director of the SBI approves, in writing, an extension.

Finally, the legislation also requires the Division of Motor Vehicles to report to the Joint Legislative Commission on Governmental Operations on January 1 and July 1 of each year on the total number of private plates, confidential plates, and fictitious plates issued to each agency.

Except as otherwise provided, this section became effective July 1, 2001. (TG)

## **Masters Level Internships in State Agencies**

S.L. 2001-424, Sec. 6.17 (SB 1005, Sec. 6.17) reinstates the Governor's Public Management Fellowship Program, allowing State agencies to resume paid internships for recent graduates of in-State Masters of Public Administration and Masters of Public Policy programs, subject to the availability of agency funds.

This section became effective July 1, 2001. (EC)

## **Application of Tort Claims Act to Bus Drivers**

S.L. 2001-424, Sec. 6.18 (SB 1005, Sec. 6.18). See **Civil Law and Procedure**.

## **Personal Services Contracts/Reporting Requirements**

S.L. 2001-424, Sec. 6.19 (SB 1005, Sec. 6.19) requires that by January 1, 2002, and quarterly thereafter, each State department, agency, and institution shall make a detailed written report to the Office of State Budget and Management and the Office of State Personnel on its utilization of personal services contracts. The report by each State department, agency, and institution shall include the following:

- The total number of personal services contractors in service during the reporting period.
- The type, duration, status, and cost of each contract.
- The number of contractors utilized per contract.
- A description of the functions and projects requiring contractual services.
- The number of contractors for each function or project.
- Identification of the State employee responsible for oversight of the performance of each contract and the number of contractors reporting to each contract manager or supervisor.

By March 15, 2002, and biannually thereafter, the Office of State Budget and Management and the Office of State Personnel shall compile and analyze the information gathered and submit a report to the Joint Legislative Commission on Governmental Operations.

This section became effective July 1, 2001. (EC)

## **Electronic Distribution of Auditor's Reports**

S.L. 2001-424, Sec. 9.1 (SB 1005, Sec. 9.1) authorizes the State Auditor to make copies of audit reports available by electronic means as well as in written form. The Auditor need only notify the General Assembly, the governor, the Chief Executive Officer of each agency audited and other person as the Auditor deems appropriate that an audit report has been published, its subject and title, and the locations at which the report is available. The Auditor must distribute copies of the report only to those who request a report. Also, the Auditor need only furnish copies of an audit to the Joint Legislative Commission on Governmental Operations when requested by the Commission, and shall provide copies in written or electronic form, as requested.

This section became effective July 1, 2001. (KCB)

## **Eliminate State Planning Unit and Rename Budget Office**

S.L. 2001-424, Sec. 12.2 (SB 1005, Sec. 12.2) deletes the phrase "Office of State Budget, Planning, and Management" wherever it occurs in the General Statutes and replaces it with the phrase "Office of State Budget and Management".

This section became effective July 1, 2001. (KCB)

## **Use of Internet for Agency Publications**

S.L. 2001-424, Sec. 14.1 (SB 1005, Sec. 14.1) directs each of the following agencies to review its printing and publications requirements and schedules and to develop a plan to reduce the cost of printing, publishing, and distributing agency information and materials by using computer technology and the Internet. This section applies to the Office of the Governor, the Office of the Lieutenant Governor, the Department of Administration, the Office of the State Auditor, the Office of State Budget and Management, the Board of Elections, the Treasurer, the Office of Administrative Hearings, the Office of the State Controller, the Department of Cultural Resources, the General Assembly, the Office of State Personnel, the Department of Revenue, and the Rules Review Commission. Each agency must submit a written report to the Fiscal Research Division of the General Assembly by April 1, 2002, outlining the required information and the recurring adjustments in the agency budget.

This section became effective July 1, 2001. (KCB)

## **State Agencies Report on Intellectual Property**

S.L. 2001-424, Sec. 15.1 (SB 1005, Sec. 15.1) establishes new mandates regarding intellectual property and the State. The act:

- Requires that, before a State agency, institution, or other entity transfers patentable intellectual property developed by a State employee, it submit to the Governor, the Joint Legislative Commission on Governmental Operations, and the Chairs of the House of Representatives Science and Technology Committee and the Senate Information Technology Committee a written evaluation of the nature and potential value of the State's interest in the patentable intellectual property, and the means to best protect that interest, as appropriate;
- Requires that, before a State agency, institution, or other entity releases any State grants or loans to non-State entities for purposes of developing patentable intellectual property, it submit to the Governor, the Joint Legislative Commission on Governmental Operations, and the Chairs of the House of Representatives Science and Technology Committee and the Senate Information Technology Committee a written evaluation of the means to be

used by the non-State entity to assure State funds do not inappropriately inure to the benefit of individuals serving in an official capacity for the State, a State agency, or the non-State entity that receives the funds;

- Exempts from the above-described reporting requirements, the University of North Carolina and its constituent institutions, the North Carolina Community Colleges System, and employees of these institutions who are subject to the intellectual property and inventor policies of the institutions employing them; and
- Requires the Board of Science and Technology, considering certain enumerated issues and consulting affected parties, to study the transfer and use of intellectual property developed with State resources, including State funds, State personnel, or facilities and to recommend to the Governor and General Assembly, at its 2002 Regular Session, means to promote and regulate the transfer and use of intellectual property assets developed with State resources.

This section became effective July 1, 2001. (FF)

## **Abolish Center for Entrepreneurship and Technology**

S.L. 2001-424, Sec. 20.4 (SB 1005, Sec. 20.4) abolishes the Center for Entrepreneurship and Technology in the Department of Commerce, effective July 1, 2001, and prohibits the Department from carrying forward any unencumbered funds for the Center to the 2001-2002 fiscal year, effective June 30, 2001.

This section, except as otherwise indicated, became effective July 1, 2001. (FF)

## **Transfer Evaluation of Common Follow-Up Information Management System Data to Employment Security Commission**

S.L. 2001-424, Sec. 20.17 (SB 1005, Sec. 20.17) transfers from the Office of State Budget and Management (OSBM) to the Employment Security Commission (ESC) the duty of evaluating data collected under the common follow-up information management system (CFS) on the effectiveness of job training, education, and placement programs. The CFS was established by the ESC, in consultation with the OSBM, pursuant to G.S. 96-32, and the confidential data collected under the CFS is used to determine if specific State program goals and objectives are attained, to determine placement and completion rates for each program, and to make recommendations regarding the continuation of State funding for programs evaluated. The section also transfers, from the OSBM to the ESC, the duty to report to the Governor and General Assembly upon the convening of each biennial session on the evaluation of the CFS-gathered data.

This section became effective July 1, 2001. (FF)

## **Boards and Commissions**

### **Electrical Contractors**

S.L. 2001-159 (SB 396) authorizes the Board of Examiners of Electrical Contractors (Board) to acquire real property, to increase various licensing fees, and to establish a staggered system of license renewal.

**Power to Acquire Real Property.** Previously, the Board was required to apply to the Department of Administration and comply with statutory and Departmental procedures in order to purchase real property. If the Department determined that was in the best interest of the State for the property to be purchased, the purchase price and terms were submitted to the Governor and Council of State for approval. Further, if the appraised value of the real property is at least \$25,000,



and the property will not be used for transportation purposes, the acquisition may only be made after consultation with the Joint Legislative Commission on Governmental Operations.

Under this legislation, the Board has the authority to acquire, rent, encumber, alienate, and otherwise deal with real property. This authority is subject only to approval by the Governor and Council of State. Any collateral pledged by the Board is limited to the assets, income, and revenues of the Board. Currently, at least four other licensing boards have this authority, including the Board of Certified Public Accountant Examiners, the General Contractors Licensing Board, the Medical Board, and the State Bar.

**Fees.** The act authorizes the Board to increase various license and examination fees, subject to statutory caps, for the purpose of funding computerized testing and for additional investigative personnel. If the Board wants to increase its fees beyond the maximums set out by statute, the Board must go through the permanent rule-making process, including notice, public hearing, and public comment.

This act also sets out interim fees, which became effective July 1, 2001.

**Staggered License Renewal.** Under prior law, all licenses expired on June 30 following the date of issuance. This act establishes a staggered license renewal system that will enable the Board to process renewals monthly, rather than once per year. In addition, exams are given in March and April, and this change will allow the Board to issue initial licenses for a full year, rather than for only several months. The Board is also given the authority to renew licenses expiring on June 30, 2001 for more than a year in order to establish the staggered system. Any licensees whose licenses are renewed for more than one year will pay the annual fee and a prorated fee to cover the period of time beyond one year.

Except as otherwise stated, the act became effective May 31, 2001. (MS, TG)

## **Amend Auctions/Auctioneers Laws**

S.L. 2001-198 (HB 1341) amends the laws relating to auctions and auctioneers. The act provides that the North Carolina Auctioneers Commission shall collect fees required by the Department of Justice for expenses associated with conducting criminal record checks of applicants for licensure as an auctioneer and remit the fees to the Department of Justice.

The act authorizes the Commission to adopt rules to establish continuing education requirements for persons holding apprentice auctioneer, auctioneer, or auction firm licenses. It also authorizes the Commission to acquire and otherwise deal with real property, to purchase, rent or lease equipment and supplies, and to purchase liability or other insurance to cover the activities of the Commission.

The act became effective June 13, 2001. (WGR)

## **Interstate High-Speed Rail Commission**

S.L. 2001-266 (SB 9). See **Transportation**.

## **Plumbing and Heating Contractors**

S.L. 2001-270 (SB 395) gives the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors the authority to acquire and otherwise deal with real property in the same manner as a private person, subject to the approval of the Governor and Council of State.

The act also makes changes to the definitions of heating groups. The definition of "heating group number two" now includes integral systems for heating or cooling having a mechanical refrigeration capacity in excess of 15 tons, and systems installed in single-family residences are included under this group regardless of size. The definition of "heating group number three" now includes heating or cooling systems having a mechanical refrigeration capacity of fifteen tons or less.

The act also makes changes to the licensing and examination requirements for plumbing, heating, and fire sprinkler contractors. The Board may now require an applicant, before taking the examination, to establish that he or she is at least 18, has not been convicted of any misdemeanors or felonies involving moral turpitude, and is of good moral character. The act also requires that the examination be given at least twice a year, authorizes the Board to offer written examinations or administer examinations by computer, and authorizes the Board to require additional education before reexamination if the applicant fails three times. The act also authorizes the Board to increase application and examination fees and annual fees for licensed contractors.

The act became effective July 6, 2001. (WGR)

## **Expand Veterinary Medical Board/Injunctions for Chiropractic Board**

S.L. 2001-281 (HB 722), as amended by S.L. 2001-487, Sec. 104 (HB 338, Sec. 104), increases the membership of the North Carolina Veterinary Medical Board from seven members to eight members. The act also provides that the General Assembly, upon recommendation of the President Pro Tempore, shall appoint the member formerly appointed by the Lieutenant Governor, and that the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a member who is registered as a veterinary technician.

The act also gives the State Board of Chiropractic Examiners the authority to bring an action in its own name for injunctive relief in order to prevent persons from practicing chiropractic without a license regardless of whether criminal prosecution has been or will be instituted.

The act became effective July 13, 2001. (WGR)

## **Soil & Water Conservation Comm. Powers & Duties**

S.L. 2001-284 (HB 1111). See **Environment & Natural Resources**.

## **Real Estate/Travel Agent Fees Regulated**

S.L. 2001-293 (HB 558) authorizes the Real Estate Commission to adopt rules to allow and regulate the payment of fees by real estate agents to travel agents for the procurement of potential tenants in vacation rentals. The rules may define "travel agent", regulate the types of transactions between real estate brokers and travel agents, and limit the amount of allowable fees. The rules may not authorize an unlicensed person, such as a travel agent, to negotiate a real estate transaction on behalf of another.

The act became effective January 1, 2001. (JH)

## **Pharmacy Technicians**

S.L. 2001-375 (SB 446) authorizes the Board of Pharmacy to establish registration criteria for pharmacy technicians. A "pharmacy technician" is a person who performs technical functions to assist a pharmacist in preparing and dispensing prescription medications and who works under the supervision of the pharmacist. In order to be employed as a pharmacy technician, the person must either hold a high school diploma or its equivalent or be enrolled in a program that awards a high school diploma. In addition, within 180 days of employment, the pharmacist-manager must provide a training program that includes pharmacy terminology and calculations dispensing systems and labeling requirements, pharmacy laws and regulations, record keeping and the proper handling and storage of medications. Upon completion of the training program, the pharmacy technician must register with the Board and pay a \$25.00 fee. The pharmacy technician must re-register with the

Board annually.

The act also limits the number of pharmacy technicians a pharmacist may supervise to no more than two unless the pharmacist-manager has received written approval from the Board. Written approval will not be granted unless the technicians have passed a nationally recognized pharmacy technician certification exam, or its equivalent, that has been approved by the Board. In addition, the act also authorizes the Board to discipline pharmacy technicians and directs the Board to include pharmacy technicians in Board agreements with special peer review organizations.

Finally, the act includes a grandfather provision, which provides that a person employed as a pharmacy technician prior to January 1, 2002, may register with the Board without completing the pharmacy technician training program if the pharmacist manager who employed the person certifies that the person has appropriate training. The person is still required to register with the Board and pay the required fee no later than July 1, 2002.

The act became effective January 1, 2002. (MS)

## **Allow Pharmacy Board to Acquire Property**

S.L. 2001-407 (HB 226) permits the North Carolina Board of Pharmacy to acquire, hold, rent, encumber, alienate, and otherwise deal with real property and to purchase or lease equipment and supplies and purchase liability or other insurance. Purchases and rental of real property will be subject to the approval of the Governor and the Council of State.

In light of the provision requiring State agencies to pay the first \$150,000 of a claim, the Pharmacy Board if authorized to purchase insurance could purchase insurance to cover that amount. If the Board is authorized to purchase insurance and purchases insurance in an amount at least equal to the limits of the State Tort Claims Act (which is currently \$500,000), the Board's insurance coverage will be in lieu of the State's obligation to pay a claim under the State Tort Claims Act.

The act became effective September 14, 2001. (DJ)

## **Transfer Board of Science and Technology**

S.L. 2001-424, Sec. 7.6 (SB 1005, Sec. 7.6) transfers the statutory power, duties, functions, records personnel, property, and unexpended balances of appropriations, allocations, or other funds from the Department of Administration to the Department of Commerce.

This section became effective July 1, 2001. (KCB)

## **Office of Indigent Defense Services Amendment and Corrections**

S.L. 2001-424, Sec. 22.11(b) (SB 1005, Sec. 22.11(b)) clarifies that appointments to the Commission on Indigent Defense Services by certain organizations specified in the statute shall be attorneys.

This subsection became effective July 1, 2001. (TG)

## **Building Codes, Inspection, Construction**

### **Building Code Subject to APA**

S.L. 2001-141 (SB 1036) clarifies that the State Building Code Council is fully subject to the requirements of the APA. The act directs the Council to publish a notice of public hearing in the *North Carolina Register* at least 15 days prior to the date of the hearing. The act also clarifies in the

Council's statutes that the State Building Code is a rule and is fully subject to the requirements of the APA, including review by the Rules Review Commission, and that all rules adopted by the Council are subject to legislative disapproval. The act makes clear that the effective dates for amendments to the Code will be in accordance with the effective date of rule changes under the APA. The act directs the Council to provide a copy of the State Building Code to the Rules Review Commission and the Office of Administrative Hearings. The act provides that the Council is required only to publish notice of hearing in the North Carolina Register and not the text of a proposed rule. The Office of Administrative Hearings is not required to publish the Building Code or proposed changes to the Building Code in the *Register* or in the *North Carolina Administrative Code*. The Council will continue to publish the Building Code pursuant to G.S. 143-138(g). Finally, the act clarifies that for purposes of administrative hearings, the Council is subject to Article 3A of the APA governing contested cases.

The act became effective May 31, 2001 and applies to revisions made to the Building Code on or after January 1, 2002. (BR)

## **County Building Code Revisions**

S.L. 2001-219 (SB 342). See **Local Government**.

## **Building Inspections Contracted**

S.L. 2001-278 (HB 598). See **Local Government**.

## **Building Code Revisions**

S.L. 2001-324 (SB 817) amends the statutes governing the State Building Code to exempt business entities that are licensed to sell automatic weapons as a federal firearms dealer and who sell firearms or ammunition and operate a firing range which rents firearms and sells ammunition from the door lock requirements of the Chapter 10 of Volume 1 of the North Carolina State Building Code. The Department of Insurance shall issue a permit for the exemption where (1) the business facility has a sales floor and customer occupancy space on one floor and is 15,000 square feet or less; (2) the facility is equipped with an approved smoke, fire and break-in alarm system; (3) within 10 days of the issuance of the permit all applicable employees are given a written facility locking plan; (4) signs are posted at each entrance to the facility warning that the building is exempt from the door locking requirements of the Building Code; and (5) the \$500 permit fee is paid.

Businesses that fail to comply with the permit requirements shall be subject to a civil penalty of \$500 for the first offense, \$1,000 for the second offense and \$5,000 for the third and subsequent offenses, except when the facility is in compliance with the Building Code door lock provisions.

The act became effective July 31, 2001. (BR)

## **Building Code Pilot Program**

S.L. 2001-372 (HB 633) establishes a building code pilot program that will develop a pilot rehabilitation building code based on the New Jersey Uniform Construction Code Rehabilitation Subcode to promote the rehabilitation of existing buildings. Cities and counties whose local building inspection departments are approved by the Building Code Council to do local plan review approval are eligible to participate in the pilot program. The "lead local jurisdiction" shall develop the pilot rehabilitation code. Any eligible local jurisdiction with a population in excess of 650,000 may qualify as a lead local jurisdiction for the pilot program and if more than one eligible local jurisdiction qualifies as a lead local jurisdiction, the responsibilities shall be borne jointly. The lead local jurisdictions shall bear the costs and expenses of developing the pilot code. Each participating jurisdiction shall bear the cost of administering the program in its jurisdiction. The participating jurisdictions shall not be liable for damages claims based on inconsistency of the pilot code with the

then current State Building Code. Projects built in compliance with the pilot code shall not be required to be retrofitted to meet the State Building Code when the pilot program expires. An interim report shall be filed with the Building Code Council, the Department of Insurance and the General Assembly on or before December 1, 2004 and a final report on or before April 1, 2006.

The act became effective August 17, 2001. (BR)

## State Building Code Changes

S.L. 2001-421 (HB 355) makes a number of changes to the statutes administered by the Department of Insurance, including provisions affecting the North Carolina State Building Code and the Building Code Council, the licensing boards for manufactured housing, home inspectors and Code Enforcement Officials, the Fireman's Relief Fund, and loss adjustment reimbursements beach plans.

Part I of the act deals with the Building Code Council and the Building Code. The act amends the provisions of G.S. 143-138(a) that require the Building Code Council to prepare a fiscal note for proposed changes to the Building Code that will have a substantial economic impact. The amendment provides that neither the Council nor the Department of Insurance may be required to pay for an outside contractor to prepare a fiscal note unless either the Department or the Council contracts with the third party to prepare the fiscal note. The act updates and amends the list of outside codes and standards, such as the National Fuel Gas Code, that the Building Code Council may use as guidance or may adopt as part of the requirements of the North Carolina State Building Code. The act requires the Building Code Council to publish notice of rule making proceedings in the North Carolina Register. The act eliminates the requirement of the triennial revision of the Building Code. These provisions apply to revisions to the State Building Code made on or after January 1, 2002.

Part II of the act makes a number of changes to the statutes affecting the North Carolina Manufactured Housing Board, The North Carolina Home Inspectors Licensure Board, and the North Carolina Code Enforcement Qualification Board. The act expands the definition of "manufactured home salesperson" to include management, specifically sales managers, lot managers, general managers, or other persons supervising salespersons. The act prohibits a member of the Manufactured Housing Board from providing or sponsoring continuing education courses while serving as a member of the Board and provides that the Manufactured Housing Board may adopt temporary rules regarding continuing education course approval. The temporary rule must be published in the North Carolina Register and 30 days prior to adoption the Board must notify persons on its mailing list of its intent to adopt the temporary rule, accept oral and written comments, and hold at least one public hearing on the proposed rule. The provision regarding publication of notice for temporary rules for continuing Education expires June 30, 2002. The act expands the definition of the term "Code" to as used by the Code Officials Qualification Board to include the set up requirements for manufactured housing. Finally, the act prohibits members of the North Carolina Home Inspectors Licensure Board from providing or sponsoring continuing education courses while serving as a member of the Board.

Part III of the act makes a technical change to the Firemen's Relief Fund providing that the clerk or finance officer of each city or county that has a local Board of Trustees is to file a certificate of eligibility for receipt of funds.

Part IV of the act amends the provisions of the statutes regarding reimbursement of insurers for expenses in adjusting windstorm and hail losses. Under G.S. 58-45-50 an insurer will not be able to appeal a decision of the Association regarding reasonableness of the amount of expenses incurred in adjusting windstorm and hail losses.

The act became effective September 22, 2001. (BR)

## Public Construction Law Changes

S.L. 2001-496 (SB 914) makes changes in the public construction laws to permit greater flexibility and efficiencies in public building design, construction and plan review, primarily through the concept of construction managers at risk, and would make changes intended to enhance and improve good faith efforts to recruit and select minority businesses for participation in public construction contracts. The act also makes clarifying changes to the scope of practice for landscape architecture.

### **Construction Flexibility for Public Entities**

The act expands the options available to all public entities in selecting methods for construction of public building projects. The five methods that may now be selected from are separate-prime bidding, single-prime bidding, dual bidding, construction management at risk, and alternative-contracting methods authorized by the State Building Commission.

The act permits public entities to utilize the services of a construction manager at risk as one of the alternative construction methods. The construction manager at risk, a licensed general contractor, would not perform work on the project, but would provide services to the public entity in preparing and coordinating bid packages, scheduling public projects, controlling costs, and administering the construction of the project. The construction manager at risk would guarantee the cost of the project and would be required to provide a performance and payment bond to the public entity. The construction manager at risk is responsible for hiring the subcontractors for the project, but must publicly bid the work as with any other public project.

The act also raises the dollar-value thresholds used to determine which construction laws apply. The act raises the threshold for the formal bidding process for construction of buildings from \$100,000 to \$300,000, and for purchase of apparatus, supplies, materials, and equipment from \$50,000 to \$90,000. The threshold for performance and payment bonds applicable to a building project is raised from \$100,000 to \$300,000 and for each contract from \$15,000 to \$50,000.

The act requires public agencies to establish dispute resolution procedures, including mediation, on all building construction or repair projects and must make these procedures available to all parties doing work on the job, including all levels of subcontractors. The agency may set a minimum level in controversy, not to exceed \$15,000, before dispute resolution procedures may be utilized.

### **Minority Participation in Public Construction Contracts**

The act continues the requirement that the State have a verifiable ten percent (10%) goal for participation by minority business in the total value of work for each building project, and requires cities, counties, and other public bodies to set verifiable percentage goals for minority participation in building projects. The dollar-value of projects subject to the full minority participation efforts has been raised from \$100,000 to \$300,000.

The act requires greater efforts to enhance and improve minority participation in public construction contracts by providing for the following:

- The term "minority business" is expanded to include businesses owned by socially and economically disadvantaged individuals.
- Local governmental units or other public or private entities that receive State funds for building projects costing \$100,000 or more shall be subject to the 10% goal.
- Minority participation goals would apply to building projects done by a private entity on a facility to be leased or purchased by the State.
- Each entity required to have a verifiable percentage goal would have to make a "good faith effort" to recruit minority participation.
- All bidders on any building project have to submit an affidavit identifying the good faith efforts made to ensure minority business participation and the total dollar value of the bid that will be performed by minority contractors.
- Public entities have to report to the Office of Historically Underutilized Business information concerning minority business utilization, and failure to provide the information will result in the loss of authority to enter into building project contracts.

- For building construction contracts costing less than \$300,000, the less formal good faith efforts are required on the part of the public entities.
- The Department of Administration is given responsibility for overseeing and enforcing compliance with the good faith efforts requirements and is directed to convey information of non-compliance to the Attorney General.
- An advisory board will be appointed by the Secretary of the Department of Administration to develop recommendations to improve the recruitment and utilization of minority businesses. These recommendations will be presented to the General Assembly, the State Construction Office, the University of North Carolina, and the community college system.

#### **Construction And Design Administration**

The act makes changes to the powers and duties of the State Building Commission regarding exemption from plan review for certain projects, expeditious plan review, agency evaluation of energy contracts, open-end design agreements, and dispute resolution procedures. The act changes the vote by which an alternative contracting method may be approved from 2/3 to a majority. The act provides an alternative to begin construction if fire safety reviews of public building specifications are not completed by the Insurance Department within 60 days.

#### **Miscellaneous Public Construction Law Changes**

The act restores most of the University of North Carolina exemptions from State Construction Office oversight on small projects that had originally expired July 1, 2001, and raises the sizes of projects exempt from \$500,000 to \$2 million. This provision expires December 31, 2006.

Public entities are required to report to the Secretary of Administration beginning in April 2003 on the effectiveness and cost benefit of the various construction methods used.

#### **Changes in Landscape Architecture Law**

The act amends the Landscape Architecture statutes to clarify what construction design matters may be signed off on by landscape architects. This change is to clarify a conflicting overlap of responsibilities with licensed engineers. The act also requires engineers and landscape architects to enter into a memorandum of understanding regarding their respective responsibilities and for a Legislative Research Commission study on the subject.

Most of the act became effective January 1, 2002 and applies to construction projects for which bids or proposals are solicited on or after that date. (WR)

## **Correction**

### **Lease Purchase Up To Three Prisons**

S.L. 2001-84 (SB 25), as amended by S.L. 2001-202 (HB 429), clarifies the procedure and financing for the State's authority to lease-purchase up to three close security correctional facilities. The initial construction loan for the prison must be obtained by the vendor on a private, taxable basis, and the State's acquisition of the constructed prisons will be financed with tax-exempt obligations. The act provides that after the prisons are completed, approved, and accepted by the State, a nonprofit corporation controlled by the State will purchase the prisons from the vendor and lease them to the State under a lease-purchase agreement. The nonprofit corporation will finance its purchase price for the prisons by selling tax-exempt obligations known as certificates of participation (COPs). The COPs represent interests in the nonprofit corporation's rights to receive the lease payments under the lease-purchase agreement with the State. The COPs are secured by a lien on the property, not by a pledge of the State's full faith and credit. The COPs are paid from the State's lease-purchase payments over the course of 20 years.

Under the plan of finance clarified in the act, there are separate contracts for construction, purchase, and lease-purchase of the prisons. The construction contract is between the vendor and the State. It requires the vendor to obtain its own construction financing, which must be derived

solely from private funds. Because only private funds will be involved during the construction phase, and because the vendor is at risk for that construction financing until the completed facilities are delivered, requirements for public bidding of construction do not apply. While the facilities are being constructed, title will be in the vendor. The facilities will not be subject to local property taxes during this stage, however, because Section 15(a) of S.L. 2001-427 (HB 232) enacted an exemption for correctional facilities being constructed on State land. The prisons are required to be built in accordance with plans and specifications developed by the Department of Correction, and the Department of Correction and the State Construction Office will inspect and review the facilities during construction to ensure that they are suitable for use and acquisition by the State.

The purchase agreement will be between the vendor and the State-created nonprofit corporation that will sell the tax-exempt COPs. The nonprofit corporation that sells the COPs is subject to the Public Records Act and the Open Meeting Laws. The purchase will take place only after the facilities are completed and accepted by the State. It is expected that the construction period will last two or two and one-half years. After the nonprofit corporation purchases the facilities, they are exempt from local property taxes. The nonprofit corporation pays for the purchase with funds derived from the sale of the COPs. It is expected that the COPs will be sold close to the time of purchase, although the State may have the nonprofit corporation sell the COPs earlier if the State Treasurer determines that an earlier sale is to the advantage of the State. Even if the COPs are sold earlier, there will be no payments from the State's General Fund until after the prisons have been accepted and purchased. Because of the State's involvement, interest with respect to the COPs is tax-exempt.

The lease-purchase agreement is between the nonprofit corporation and the State. Under the agreement, which must be approved by the Council of State and the State Treasurer, the State will make lease-purchase payments to the nonprofit corporation, which will use the funds to retire the COPs. The COPs will be secured by a lien on the property and the State's failure to make payments could result in its eviction from the property. The State Treasurer determines the price to be paid for the COPs and the rate of interest to be paid on them. The State will retain the option of refinancing the debt if interest rates fall. The State also retains the option of paying off its obligations and purchasing the property before the end of the lease-purchase period. Under the lease-purchase agreement, the State will own the facilities at the end of the lease term.

The act became effective May 17, 2001. (TG)

## **Earned Time Credit for Mentally/Physically Unfit Inmates**

S.L. 2001-424, Sec. 25.1 (SB 1005, Sec. 25.1) allows inmates who suffer from medical conditions or disabilities that prevent their assignment to work release or other rehabilitative activities to earn credit to reduce their maximum sentences based on good behavior or other criteria determined by the Department of Corrections. The Department is authorized to adopt rules to effect this provision.

This section became effective September 26, 2001 and applies to inmates serving sentences on or after that date. (WR)

## **Use of Closed Prison Facilities**

S.L. 2001-424, Sec. 25.5 (SB 1005, Sec. 25.5) directs the Department of Corrections (Department), in conjunction with the closing of prison facilities, to consult with other State and local government units about the possibilities of converting the facilities to other uses. Preference would be given to other criminal justice uses. The Department may also consult with private for-profit or nonprofit firms. The State is authorized to transfer or lease the premises to other agencies or firms consistent with this section. The Department is also authorized to convert these facilities from medium security to minimum security where the conversion would be cost effective. A prison unit leased to a county under this section would be exempt from any minimum standards adopted by



DHHS for housing adult prisoners that would otherwise apply to local governments that exceed the standards that the State would be subject to.

Prior to the transfer of any units under this section, the Department shall report to the Joint Legislative Commission on Governmental Operations and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department shall also report annually to each of these oversight committees on the conversion of these units to other uses and on all leases or transfers entered into pursuant to this section.

This section became effective July 1, 2001. (WR)

## **Extend Limits of Confinement/Term. III & Disabled Inmates**

S.L. 2001-424, Sec. 25.9 (SB 1005, Sec. 25.9) authorizes the Secretary of Correction to allow a terminally ill or permanently and totally disabled inmate, under prescribed conditions, to leave the confines of the prison while unaccompanied by a custodian for the purposes of receiving palliative care. The Secretary must find that the inmate no longer poses a threat to society and must consult with the victims of the inmate or their families prior to granting the inmate leave.

The act became effective July 1, 2001 and applies to inmates serving sentences on or after that date. (BR)

## **Compensation To Persons Erroneously Convicted**

S.L. 2001-424, Sec. 25.12 (SB 1005, Sec. 25.12) clarifies the law providing compensation to those persons who have been imprisoned for a crime and who have received a pardon of innocence on the grounds that the crime was not committed or not committed by the person. The Industrial Commission shall award such person \$20,000 for each year of imprisonment including time spent awaiting trial. Payment for portions of a year imprisoned shall be prorated. The cap on the total amount of compensation that may be received is raised from \$150,000 to \$500,000.

The act became effective July 1, 2001 and applies to persons granted a pardon of innocence on or after January 1, 2001. (BR)

## **Report on Probation and Parole Caseloads**

S.L. 2001-424, Sec. 25.20 (SB 1005, Sec. 25.20) requires the Department of Corrections to report by March 1 of each year to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee on the caseload averages for probation and parole officers. The report shall include an analysis of optimal caseloads for Probation Parole Officers and an assessment of the role of surveillance officers.

This section became effective July 1, 2001. (BR)

## **Elimination of IMPACT Program**

S.L. 2001-424, Sec. 25.22 (SB 1005, Sec. 25.22) provides for \$5,028,261 of the funds appropriated to the Department of Corrections (Department) to be used for residential programs for probationers, including the IMPACT boot camp program. The Department is to report to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee by November 1, 2001 on plans to implement the reduction in funding of the IMPACT program and any proposed modification in the programs capacity or content. The section also sets forth the intent of the

General Assembly that the IMPACT program is eliminated by June 30, 2003 and that alternative residential programs for offenders be established in the current IMPACT locations.

This section became effective July 1, 2001. (BR)

## **Contracting for Inmate Health Care**

S.L. 2001-424, Sec. 25.23 (SB 1005, Sec. 25.23) requires the Department of Correction to expand its efforts to determine the benefits of contracting for inmate health care services. The new efforts shall include expansion of the number of prison units that use Prison Health Services, Inc. to provide inmate health care services. The Department should expand to a sufficient number of prison units to allow for analysis of the quality of services and the potential for cost savings if inmate health care services were contracted for on a statewide basis.

The Department of Correction shall also issue a Request for Information from private vendors to determine the availability of services and the level of interest in providing the State with inmate health care services in three major areas:

- Inmate health care services at each State prison.
- An inmate drug prescription program that includes a statewide central pharmacy.
- A medical utilization management program for the control of the cost and quality of inmate medical treatment by outside providers.

The Department of Correction must report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by February 15, 2002, on:

- The responses to the Request for Information, including, at a minimum, information on the number of vendors responding; the background and experience of each vendor in providing similar services to other state prison systems; the potential cost savings and benefits of using a private vendor for each of the three major areas; and the time line for issuing a Request for Proposal and awarding a contract if it were determined that a Request for Proposal should be issued, and
- The status of the current contract for operation of inmate health care services at individual prisons including any documented savings, benefits, or operational problems with the contract services.

This section became effective July 1, 2001. (TG)

## **Authorize Prison Construction**

S.L. 2001-424, Sec. 25.24 (SB 1005, Sec. 25.24) authorizes the Department of Administration and the Department of Correction to contract for the construction of three new close-custody correctional facilities. The contract price for the three prisons shall not exceed the total bid price submitted by the selected vendor on April 17, 2001. The sites for the three prisons shall be Anson, Alexander, and Scotland Counties. The final contract proposal for the three prisons shall be subject to review and approval of the Council of State.

This section became effective July 1, 2001. (TG)

# **Courts and Justice**

## **State Judicial Council Membership**

S.L. 2001-96 (HB 902) adds an appointee of the Indigent Defense Services Commission to the State Judicial Council to serve a four-year term.

The act became effective July 1, 2001 and the term of the member added began on that

date. (TG)

### **Add Juvenile Members**

S.L. 2001-199 (SB 7) changes the membership of each county's Juvenile Crime Prevention Council. It lowers the maximum age of one member from 21 to 18, adds another member under the age of 18, and requires one of these two juveniles to be a member of the State Youth Council. The initial term for the juvenile who is a member of the State Youth Council is for one year, beginning July 1, 2001. Subsequent terms are for two years.

The act also adds three members to the State Advisory Council on Juvenile Justice and Delinquency Prevention. Two of these new members must be juveniles, one of whom is a member of the State Youth Council. The initial terms for the two juveniles are for one year, beginning January 1, 2002. Subsequent terms will be for two years. The third new member is the Attorney General.

The act became effective June 13, 2001. (RJ)

### **Tennessee Valley Authority Officers' Authority**

S.L. 2001-257, Sec. 1 (HB 689, Sec. 1) adds the Tennessee Valley Authority (TVA) officers to the list of federal law enforcement officers who, when asked to assist State or local law enforcement agencies, acting within the scope of their subject matter and territorial jurisdiction, are empowered with the same authority and the same personal civil immunity as is given to North Carolina law enforcement officers. The TVA is a federal corporation that is the nation's largest public power company, the steward of the Tennessee River system, and a regional economic development agency. In North Carolina, the TVA owns and operates four hydroelectric dams (Appalachia and Hiwassee in Cherokee County, Chatuge in Clay County, and Fontana in Swain and Graham Counties) and manages the recreational use of their reservoirs. The TVA Police is a federally commissioned, internationally accredited law enforcement agency that provides protection for TVA properties and employees and for the users of the TVA's recreation facilities. While providing temporary assistance to State or local law enforcement agencies, a TVA federal agent would not be considered an employee of any State or local agency, would still be acting within the scope of the agent's duties under the Federal Tort Claims Act, and would not have authority to initiate or conduct independent investigations of violations of State law.

This section became effective October 1, 2001. (TG)

### **Appellate Reports to Cherokee Supreme Court**

S.L. 2001-280 (HB 75) requires the Administrative Officer of the Courts to provide, at the State's expense, copies of the appellate division reports (opinions of the North Carolina Supreme Court and the North Carolina Court of Appeals) to the Cherokee Supreme Court, Eastern Band of Cherokee Indians. The Administrative Officer of the Courts distributes, at the State's expense, copies of the appellate division reports to a number of entities, including State agencies, departments, and commissions; federal agencies and departments; State and federal courts; and public and private universities located in North Carolina.

The act became effective July 13, 2001. (JH)

### **District Ct. District 11 Judges' Residency**

S.L. 2001-400 (HB 844) divides District Court District 11 into District Court Districts 11A and 11B for electoral purposes only. The act provides that District Court District 11A will be made up of Harnett and Lee Counties and will have three judges. Those three judgeships are to be filled by

district court judges from the current District 11 who reside in Harnett or Lee Counties on October 1, 2002, and their successors will be elected for four-year terms in the 2004 election. District Court District 11B will be made up of Johnston County and will have five judges. Those five judgeships are to be filled by district court judges from the current District 11 who reside in Johnston County on October 1, 2002. Two of those judges' terms expire on the first Monday in December 2002, and those judges' successors will be elected for four-year terms in the 2002 election. The remaining judges' successors will be elected for four-year terms in the 2004 election.

The act will become effective July 1, 2002, or the date the act is approved under section 5 of the Voting Rights Act of 1965, whichever is later. (WGR)

## **Nonpartisan District Court Elections**

S.L. 2001-403 (SB 119), as amended by S.L. 2001-460, Sec. 11 (SB 17, Sec. 11), provides for the nonpartisan election of district court judges. The act moves the existing provisions regarding the nomination and election of district court judges from the partisan election method set out in the general election law to the nonpartisan election method set out for superior court judges. Under this method, judges are nominated and elected without regard to political party. Candidates run in nonpartisan primaries, held on the same day in May as the party primaries. The primaries reduce the field to twice the number to be elected, eliminating additional candidates, and then the reduced field runs in the November general election. The nonpartisan primaries and elections are by district.

The act moves, but does not substantively change, certain election provisions. In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate for district court judge must still file a written statement designating the vacancy to which the candidate seeks election, and a person seeking election for a specialized district judgeship must still file a written statement designating the specialized judgeship for which the person seeks nomination.

The act also applies the requirements of the write-in statute to district court judge elections and provides that ties among candidates are to be resolved by the board of elections in accordance with new procedures enacted this session.

Contingent on approval under the Voting Rights Act, this act becomes effective January 1, 2002. (WGR)

## **Report on Community Mediation Centers**

S.L. 2001-424, Sec. 22.2 (SB 1005, Sec. 22.2) adds a new section in Article 5 of Chapter 7A of the General Statutes to require annual reporting by community mediation centers (centers) to the Mediation Network of North Carolina, establish prerequisites for receipt of State funds by centers, and dictate the entity structure for State-funded centers.

This section requires each center to annually report to the Mediation Network specific information including: the types of dispute settlement services provided; statistics on clients served, degree of service provided and referrals; program funding; itemization of expenses and use of State funds; and identification of future service demands and budget requirements.

This section also sets up a sliding scale for State funding of each center based on the numbers of years the center has received State funds. For example, a center receiving State funds for the first time must show that at least 10% of total funding comes from non-State funds whereas a center receiving funds for six or more years must document that at least half of its total funding derives from non-State funds. The section requires centers to make a good faith effort to maintain non-State funding levels if above the threshold and provides procedures for seeking a waiver of the funding level requirements when appropriate.

This section also specifies that each center receiving State funds must function as, or as part of, a nonprofit organization or local government entity.

This section became effective July 1, 2001. (FF)

## **Add Special Superior Court Judge**

S.L. 2001-424, Sec. 22.4 (SB 1005, Sec. 22.4) authorizes the Governor, effective October 1, 2001, to appoint a special court judge for a term expiring five years from the date the judge takes office. This section eliminates a vacant superior court judgeship in District 4B, effective the later of October 1, 2001 or upon approval under section 5 of the Voting Rights Act of 1965. The section adds a superior court judgeship in District 24 for a term expiring December 31, 2002, with the successor to be selected in the General election of 2002. (GSP)

## **Eliminate Unnecessary or Obsolete Reports**

S.L. 2001-424, Sec. 22.6 (SB 1005, Sec. 22.6) eliminates AOC reports in three areas: establishment of training for administrative and victim and witness services, development of a procedures manual for public documents, and establishment of safety and health programs for employees.

This section became effective July 1, 2001. (GSP)

## **Collection of Worthless Checks Fund**

S.L. 2001-424, Sec. 22.7 (SB 1005, Sec. 22.7) authorizes the Judicial Department to use any remaining balance in the Collection of Worthless Checks Fund on June 30, 2001, for the purchase or repair of office or information technology equipment during the 2001-2002 fiscal year. The Judicial Department is required to report to the General Assembly prior to using any funds.

This section became effective July 1, 2001. (GSP)

## **Office of Indigent Defense Services Report**

S.L. 2001-424, Sec. 22.12 (SB 1005, Sec. 22.12) requires the Office of Indigent Defense Services to report annually by March 1 to the chairs of the Senate and House Appropriations Committees and to the Appropriations Subcommittees on Justice and Public Safety on statistical information on indigent defense services and recommendations for improvements. Included in the reports are to be information on:

- The volume and cost of cases handled in each district by both assigned counsel and public defenders.
- Actions taken by the Office to improve cost-effectiveness and quality of indigent defense, including the capital case program.
- Plans for changes in rules, standards, or regulations in the upcoming year.
- Recommended changes in law and funding procedures that would assist the Office in improving the management of funds expended for indigent defense services.

This section became effective July 1, 2001. (WR)

## **Authorize Additional Magistrate**

S.L. 2001-424, Sec. 22.16 (SB 1005, Sec. 22.16) increases the maximum number of magistrates authorized for Columbus County from 9 to 10.

This section became effective July 1, 2001. (WR)

## **Eliminate Vacant District Court Judgeship**

S.L. 2001-424, Sec. 22.17 (SB 1005, Sec. 22.17) increases the number of district court judges for District Court Judicial District 10 (Wake County) from 14 to 15. The Governor is authorized to appoint this new judge and the election for the district court seat shall be held in 2004 for the term beginning December 1, 2004.

This section also reduces the number of district court judges for District Court Judicial District 17A (Rockingham County) from 3 to 2 effective upon the later of January 1, 2002 or approval by the US Justice Department under Section 5 of the Voting Rights Act of 1965.

This section became effective July 1, 2001. (WR)

## **Victims Assistance Network Report**

S.L. 2001-424, Sec. 26.4 (SB 1005, Sec. 26.4) requires the Department of Crime Control and Public Safety to report on the expenditure of funds allocated to it for the Victims Assistance Network. The Department must also report on the Network's efforts to gather data on crime victims and their needs, act as a clearinghouse for crime victims' services, provide an automated crime victims' bulletin board for subscribers, coordinate and support activities of other crime victims' advocacy groups, identify the training needs of crime victims' services providers and criminal justice personnel, and coordinate training for these personnel. The Department must submit its report to the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the Senate and House of Representatives by December 1 of each year of the biennium.

This section became effective July 1, 2001. (TG)

## **Termination of Certain ALE Positions**

S.L. 2001-424, Sec. 26.10 (SB 1005, Sec. 26.10) requires the termination of three positions by June 30, 2002 of the 10 remaining supervisor positions and the 12 assistant supervisor positions in the district offices of the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety. The Department of Crime Control and Public Safety must report to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division of the General Assembly by May 1, 2002, on the positions identified by the Department for termination.

This section became effective July 1, 2001. (TG)

## **Transfer Community Service Work Program**

S.L. 2001-424, Sec. 26.11 (SB 1005, Sec. 26.11) merges the Community Service Work Program of the Division of Victims and Justice Services of the Department of Crime Control and Public Safety with the Division of Community Corrections of the Department of Correction, effective January 1, 2002. All (i) statutory authority, powers, duties, and functions, including rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Community Service Work Program of the Division of Victims and Justice Services of the Department of Crime Control and Public Safety shall be transferred to and vested in the Department of Correction.

The following positions were required to be terminated by January 1, 2002:

- The four regional managers.
- The 21 district managers in the area of community service work.

- The Director of the Division of Victim and Justice Services.
  - The administrative assistant of the Division of Victim and Justice Services.
- This section became effective July 1, 2001. (TG)

## **Governmental Immunity**

### **Application of Tort Claims Act to Bus Drivers**

S.L. 2001-424, Sec. 6.18 (SB 1005, Sec. 6.18). See **Civil Law and Procedure**.

### **State Employee Federal Remedy Restoration Act**

S.L. 2001-467 (HB 898). See **Employment**.

## **Indian Affairs**

### **Indian Culture Center Lease**

S. L. 2001-89 (HB 85) modifies the terms required for a contract between the State of North Carolina and the North Carolina Indian Cultural Center, Inc., for the lease of property the State acquired for the Indian Cultural Center. Provisions for the lease were originally established in the 1989 Session Laws and have been modified several times of the past 10 years. Under the act, the lease would no longer be required to include the following terms: (1) a reversionary clause stipulating that the Indian Cultural Center had to raise \$3,000,000 in funding by June 1, 2001 and (2) providing for automatic termination of the lease if the \$3,000,000 was not obtained.

The act became effective May 18, 2001. (BR)

### **Indian Tribe Unemployment Option-AB**

S.L. 2001-184 (HB 311). See **Employment**.

### **DSS/Indian Affairs Collaboration**

S.L. 2001-309 (HB 715). See **Children and Families**.

### **Appointments/Triangle Native American Society**

S.L. 2001-318 (HB 897) increases from 19 to 20 the representatives of the Indian community on the North Carolina State Commission of Indian Affairs and provides that one of the representatives shall be from the Triangle Native American Society. The act also increases from 15 to 16 the maximum number of commissioners to be appointed to the Indian Housing Authority and increases from 16 to 17 the membership of the Board of the North Carolina Indian Cultural Center, specifying that one member is to be appointed from the Triangle Native American Society.

The act became effective July 28, 2001. (WGR)

## Indian Land in Trust

S.L. 2001-344 (HB 363) authorizes the North Carolina State Commission of Indian Affairs to hold land in trust for the benefit of State-recognized Indian tribes and to act as trustee for any interest in real property that may be transferred to the Commission for the benefit of these tribes. The provisions of the act do not apply the Eastern Band of Cherokees or other federally recognized Indian tribes.

The act became effective August 3, 2001. (BR)

## Eastern Band of Cherokees: Full Faith & Credit

S.L. 2001-456 (HB 1270) adds a new Chapter 1E to the General Statutes providing that the North Carolina courts shall give full faith and credit to the judgments, decrees, and orders signed by a judicial officer of the Eastern Band of Cherokee Indians so long as the judgments of the North Carolina courts are given full faith and credit by the Tribal Court of the Eastern Band of Cherokees. Currently, the Tribal Court does afford full faith and credit to the judgments, decrees and orders of the North Carolina Courts.

The act became effective October 29, 2001. (BR)

## Cherokee Compact

S.L. 2001-513, Sec. 29 (HB 231, Sec. 29) adds G.S. 147-12(14) granting the Governor the power to negotiate and enter into Class III Tribal-State gaming compacts and amendments on behalf of the State consistent with the State law and the Indian Gaming Regulatory Act, Public Law 100-497. Chapter 71A, Indians, is amended by adding a new section, G.S. 71A-8, to specify that a federally recognized Indian tribe may conduct games consistent with the Indian Gaming Regulatory Act, Public Law 100-497, in accordance with a valid Tribal-State compact executed by the Governor pursuant to G.S. 147-12(14), and approved by the US Department of Interior.

This section became effective August 1, 1994 and applies to compacts and amendments thereto executed on or after that date. (TM)

## Licensure

### Adjust License Thresholds for Inflation

S.L. 2001-140 (SB 431) increases the project value thresholds for limited and intermediate general contractors licenses. For an intermediate license, the value of a single project that the licensee may construct is increased from \$500,000 to \$700,000. For a limited license, the value of a single project that the licensee may construct is increased from \$250,000 to \$350,000.

The act became effective May 31, 2001. (JH)

### Out-of-State CPAs/Fees

S.L. 2001-313 (SB 628) makes changes in three different areas of the statutes governing certified public accountants (CPA).

**Out-of-State CPAs.** The act allows a CPA who resides in another jurisdiction to perform, or offer to perform, work in North Carolina without undergoing the licensing process if the person meets all of the following conditions:

- Holds a valid certificate as a CPA in the jurisdiction in which the person resides.



- Holds a valid license to practice as a CPA in the jurisdiction in which the person resides. Some states require not only that a CPA be certified but that they also be licensed. North Carolina is a one-tier state, meaning that the certification and the licensure are the same.
- Notifies the State Board of Certified Public Accountant Examiners that the person intends to perform or offer to perform services in this State.
- Agrees to comply with the laws of this State and the rules adopted by the Board.
- Consents to have notice of an administrative hearing be sent to the licensing board in the person's principal state of business rather than to the individual personally or by certified mail.
- Pays an annual fee of \$50.

**Fee Increase.** The act raises the maximum fees the Board may charge as follows:

- *Notification Fee.* A nonresident who wishes to perform or offer to perform services in this State as a CPA must pay a notification fee. The Board may establish the notification fee in an amount that does not exceed \$50.
- *Examination fee.* The Board's rules provide that the examination fee is the amount that enables the Board to recover its costs of administering the test. This act increases the maximum cap of the examination fee from \$200 to \$400. Further, the act provides that the Board may charge the applicant the actual costs of the examination services when the Board uses a testing service.
- *Certification fee.* The act raises the maximum cap of the certification fee from \$75 to \$150.
- *Annual certification renewal fee.* The act raises the maximum cap of the annual renewal fee from \$50 to \$100.

**Limited Liability Partnerships and Limited Liability Companies.** It makes conforming changes to the statutory definition of "firm" in Chapter 93 (Certified Public Accountants) to reflect the existence of limited liability partnerships and companies.

The act became effective July 28, 2001. (CA, TG)

## Locksmith Licensure

S.L. 2001-369 (HB 942) establishes the "Locksmith Licensing Act." Under prior law, locksmiths were neither licensed nor regulated in North Carolina. Specifically, the act provides that:

**Licensure Required.** The act requires locksmiths to be licensed to perform locksmith services. "Locksmith services" are defined as the repairing, rebuilding, rekeying, repining, servicing, adjusting, or installing locks or mechanical or electronic locking devices, access control devices, egress control devices, safes, vaults, and safe deposit boxes for compensation.

Performing locksmith services without a license is punishable as a Class 3 misdemeanor unless the conduct is covered under some other provision of law providing for a greater punishment.

**North Carolina Locksmith Licensing Board.** The act also establishes the North Carolina Locksmith Licensing Board consisting of nine members, six locksmiths appointed by the General Assembly and three non-locksmith public members appointed by the Governor. The locksmith members must have at least five years experience and must continue to practice locksmith services while on the Board.

The Board has the power to:

- Determine qualifications for licensure.
- Investigate complaints and conduct investigations.
- Issue, deny, suspend, or revoke licenses and conduct disciplinary actions.
- Establish and approve continuing education requirements.
- Set licensure and renewal fees within the amounts set by statute.

**Licensure.** Individuals will be licensed as locksmiths if they are at least 18 years old and of good moral and ethical character; pass an exam administered by the Board; and pay all required

fees.

Upon licensure, the licensee will be issued a photo identification card that must be available for inspection while performing locksmith services. Licenses must be posted, and all advertisements must contain the licensee's identification number. Locksmiths must provide the Board with the names of persons employed by them who perform locksmith services and have locksmith tools. Finally, locksmiths are required to make a reasonable effort to verify that a customer is the legal owner of the vehicle or property when opening the locked door.

**Required Fees.** The act establishes the following maximum fees:

- Issuance of a license \$100.00
- Renewal of a license (every 3 years) \$100.00
- Examination \$200.00
- Reinstatement \$150.00
- Late Fees \$150.00

**Exemptions from Licensure.** The following persons are exempt from the licensure requirements of the act:

- Employees of licensed locksmiths acting under the supervision of the locksmith.
- Apprentices acting under the supervision of a locksmith.
- Alarm Systems Licensing Board licensees.
- Employees of towing services, repossessioners, taxi cab services, motor vehicle dealers, or motor clubs when opening automotive locks in the normal course of business and provided that they do not represent themselves as locksmiths.
- Property owners or their employees when providing locksmith services on the owner's property, including hotels, motels, apartments, condominiums, or residential or commercial rental property.
- Retail merchants that duplicate keys, or install, service, repair, rebuild, reprogram, or maintain locks in the normal course of business and do not represent themselves as locksmiths.
- Members of law enforcement agencies, fire departments, or other governmental agencies who open locked doors in the scope of their employment.
- Salespersons demonstrating the use of locksmith tools to licensed locksmiths.
- General contractors acting within the scope of employment.
- Persons who install safety locks on wastewater systems
- Persons who sell gun locks and locking devices for firearms when acting within the course of the sale.
- Persons performing locksmith services in an emergency situation without compensation.

**Licensure of Nonresidents, Reciprocity, and Grandfathering Provisions.**

Nonresidents may be licensed in North Carolina if the person meets the statutory requirements, or if the person resides in a state that recognizes licenses issued by North Carolina.

Persons who reside in North Carolina and have at least three years experience as a licensed locksmith in another state whose standards are substantially the same as in North Carolina may be granted a license.

Any person who submits proof to the Board that the person has been actively engaged as a locksmith in North Carolina for at least two consecutive years prior to July 1, 2002 will be licensed without examination; however, these persons must still pay the required fee and must also apply to the Board no later than June 30, 2003.

The portions of the act establishing the Board and the Board's powers were effective August 16, 2001. The licensure requirements become effective July 1, 2002. (MS)

## Amend Appraisers Act

S.L. 2001-399 (SB 1066) amends the law pertaining to real estate appraisers. The act sets out the following qualification requirements for registration, licensure, and certification:

- Registration as trainee.

- At least 90 hours of Appraisal Board approved instruction within the preceding five year period or the minimum required by the federal government, whichever is greater; and
- Any additional qualification the Board imposes by rule.
- Licensure as residential real estate appraiser.
  - At least 90 hours of Board approved instruction within the preceding five year period or the minimum required by the federal government, whichever is greater;
  - At least 2,000 hours of real estate appraising experience or the minimum required by the federal government, whichever is greater; and
  - Any additional qualification the Board imposes by rule.
- Certification as residential real estate appraiser.
  - At least 120 hours of Board approved instruction within the preceding five year period or the minimum required by the federal government, whichever is greater;
  - At least 2,500 hours of real estate appraising experience or the minimum required by the federal government, whichever is greater; and
  - Any additional qualification the Board imposes by rule.
- Certification as general real estate appraiser.
  - At least 180 hours of Board approved instruction within the preceding five year period or the minimum required by the federal government, whichever is greater;
  - At least 3,000 hours of real estate appraising experience, or the minimum required by the federal government, whichever is greater, at least 50% of which must be nonresidential real estate appraisal; and
  - Any additional qualification the Board imposes by rule.

The act makes clear that any real estate appraising activities performed by a registered trainee must be performed under the direct supervision of a licensed or certified appraiser and that the appraiser must sign reports and accept shared responsibility for them.

The act also makes changes affecting the Appraisal Board. Members of the Board appointed by the Governor are to be appointed from geographically diverse areas of the State. The act also authorizes the Board to acquire and otherwise deal with real property in the same manner as a private person, subject to the approval of the Governor and the Council of State. The Board is also authorized to purchase, lease, or rent equipment and supplies and to purchase insurance to cover the Board's activities, operations, and employees.

The Board, in its background investigation of applicants for registration, licensure, or certification, may investigate any past disciplinary action taken against any other professional license in this or any other state, whether the applicant has committed any act that would be grounds for disciplinary action, and whether the applicant has been convicted of a criminal act. In addition, the act adds the following new grounds for reprimand or for suspension or revocation of a registration, license, or certificate:

- Person has plead guilty or no contest to an offense involving moral turpitude in which an essential element is dishonesty, fraud, or deceit.
- Person has had registration, license, or certificate suspended, revoked, or denied in another state.
- Person has had disciplinary action taken against another professional license.
- Person has been adjudged mentally incompetent by a court.
- Person has performed duties while impaired by alcohol or drugs.

The act also makes it unlawful for any person, in the course of any mortgage loan transaction, to influence or attempt to influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.

The act became effective October 1, 2001, except for the provision regarding appointment of members to the Board, which became effective for terms beginning on July 1, 2001 and after, and the provision making it unlawful to influence the outcome of an appraisal, which becomes effective July 1, 2002 to replace a similar provision which became effective with the rest of this act but will be repealed on July 1, 2002. (WGR)

## **Exemptions from Licensure and Certificate of Need**

S.L. 2001-424, Sec. 25.19 (SB 1005, Sec. 25.19) exempts from licensure by the Department of Health and Human Services, under Chapter 122C of the General Statutes, inpatient chemical dependency and substance abuse facilities providing services exclusively to inmates of the Department of Corrections. If an inpatient chemical dependency and substance abuse facility provides services to both inmates and to members of the general public, that portion of the facility used to serve inmates is also exempt from licensure.

Under the act, persons who contract to provide chemical and substance abuse services to inmates may construct and operate a new facility for that purpose without obtaining a certificate of need pursuant to Article 9 of Chapter 131E of the General Statutes. Such a facility developed without a certificate of need, however, will not be licensed by the Department of Health and Human Services and may not admit persons other than inmates unless the owner or operator obtains a certificate of need.

The act becomes effective July 1, 2001. (BR)

## **Military and Veterans' Affairs**

### **Special Diploma for WWII Veterans**

S.L. 2001-86 (HB 979). See **Education**.

### **American Ex-Prisoners of War Highway**

S.L. 2001-196 (HB 114). See **Transportation**.

### **Amend State Veterans Home Act**

S.L. 2001-117 (HB 261) amends G.S. 165-49(c) to allow the Veterans Affairs Commission to delegate authority to the Assistant Secretary of Veterans Affairs for the expenditure of funds from the North Carolina Veterans Home Trust Fund for operations of the State Veterans Nursing Homes. Amends G.S. 165-51 to allow the Division of Veterans Affairs to hire additional administrative staff, and amends G.S. 165-53(a) to clarify that a veteran shall be eligible for admission to a State veterans home if they were discharged from the armed forces under "honorable conditions," previously "conditions other than dishonorable."

The act became effective May 24, 2001. (TM)

### **State Veterans Cemetery Eligibility**

S.L. 2001-143 (HB 262) amends the definition of "qualified veteran" in G.S. 65-43(3) for purposes of interment in State veterans cemeteries. A qualified veteran is:

- A veteran who served an honorable military service or served a period of honorable nonregular service and is entitled to retired pay for non-regular service, or would have been entitled to retired pay for non-regular service except that the person is under 60 years of age, or is eligible for interment in a national cemetery, and
- A legal resident of North Carolina at the time of death, or for a period of at least 10 years, or at the time the veteran entered the Armed Forces of the United States.

G.S. 65-43.1(a) regarding the eligibility requirements for interment in a State veterans cemetery is amended by clarifying the definition of a "minor child" to be a child under 21 years of age or under 23 years of age if pursuing a course of instruction at an approved educational institution.

The act became effective May 31, 2001. (TM)

## **Advisory Commission on Military Affairs**

S.L. 2001-424, Sec. 12.1 (SB 1005, Sec. 12.1) creates the North Carolina Advisory Commission on Military Affairs. The Commission is created in the Office of the Governor to advise the Governor and the Secretary of Commerce on protecting the existing military infrastructure in this State and to promote new military missions and economic opportunities for the State and its citizens. The Commission consists of 21 voting members who shall serve on the Executive committee, and 9 nonvoting ex officio members who shall serve by reason of their positions. The Military Advisor within the Office of the Governor shall serve as the administrative head of the Commission, with oversight by the Executive Committee.

This section became effective July 1, 2001. (KCB)

## **Purchase and Contract**

### **Encourage Reciprocity in Bidding Process**

S.L. 2001-240 (HB 3) amends the North Carolina Purchase and Contract Law, Article 3 of Chapter 143 of the General Statutes, to encourage other states to avoid providing a percentage bidding advantage to their resident bidders. Specifically, the act amends G.S. 143-59 to provide that for contracts for commodities and services of more than \$25,000, a percent increase in the bid amount will be added to the bid of a nonresident bidder from a state that gives a percent preference to their resident bidders. The Secretary of Administration is to compile and electronically publish each year a list of the states with resident bidder preferences and the amount of the preference given for use by North Carolina agencies in evaluating bids. If the nonresident bidder would have been the lowest bidder but for the reciprocal preference, the Secretary may, after consultation with the Board of Awards, waive the reciprocal preference. The new reciprocal preference provisions do not apply to purchases of commodities in certain emergencies and to those purchases and contracts that may be entered into by means other than competitive bidding.

The act became effective January 1, 2002. (BR)

### **State Tire Retreading Contract**

S.L. 2001-424, Sec. 27.24 (SB 1005, Sec. 27.24) directs the Purchase and Contract Division of the Department of Administration to take specified steps to insure that the bid process for the State contract for tire retreading is fair and open and that it complies with State purchasing laws.

This section became effective July 1, 2001. (GSP)

## **Technology**

### **ITS Dispute Resolution**

S.L. 2001-142 (SB 1070), establishes a dispute resolution procedure to assist the Office of Information Technology Services (ITS) in the collection of fees related to information technology

services provided by ITS.

The act authorizes the Office of Information Technology Services (ITS) to go before a panel consisting of the State Auditor, the State Controller, and the State Budget Officer to resolve disputes concerning services, fees, and charges incurred by State government agencies receiving information technology services from ITS. The State Auditor is directed to adopt rules for the dispute resolution procedure. Decisions of the panel will be final in the settlement of all fee disputes that come before it.

The act became effective May 31, 2001. (BC)

## **IRMC Public Members**

S.L. 2001-166 (HB 331) provides for the appointment of two additional members of the public to the Information Resource Management Commission.

The Information Resource Management Commission (IRMC) is located administratively within the Office of Information Technology Services, and is responsible for statewide strategic information technology planning and policy development. This act expands the membership of the Commission from 20 to 22 members, adding two additional persons who are private citizens with a background in and familiarity with information systems or telecommunications. Under this act, four citizen members are now appointed by the General Assembly, two upon recommendation of the President Pro Tempore of the Senate, and two upon recommendation of the Speaker of the House.

The act became effective June 7, 2001. (BC)

## **Utilities**

### **Extend Time for Universal Service Final Rules**

S.L. 2001-252 (SB 217) amends G.S. 62-110(f1) to change the date by which the Utilities Commission must adopt final universal service rules for local phone service from July 1, 2001 to July 1, 2003. The requirement for universal service rules originally was placed into law when the 1995 General Assembly adopted legislation allowing for competitive local telephone service.

The act became effective June 29, 2001. (SR)

### **Installation of Sewer Cleanout Required**

S.L. 2001-296 (HB 824) revises the law requiring public utilities contractors to terminate the installation of house and building sewer lines at a manhole or cleanout. The act requires a public utilities contractor constructing house and building sewer lines to install an accessible cleanout at the junction of the public sewer line and the house or building sewer line. The cleanout must meet the following specific requirements:

- It is an extension of the public sewer line;
- It is at or near the property line; and
- It terminates at or above the finished grade.

The act became effective October 1, 2001, and applies to the installation of house and building sewer lines that occur on or after that date. (WGR)

### **Revise Energy Improvement Program**

S.L. 2001-338 (HB 332) makes several changes to the Business Energy Improvement Program established under Part 3 of Article 36 of Chapter 143 of the General Statutes. The act

changes the name of the program to the Energy Improvement Loan Program and designates the State Energy Office as the lead State agency in energy efficiency matters. Eligible entities under the Energy Improvement Loan Program include industrial and commercial concerns, nonprofit organizations and local governments. The Department of Administration is authorized to adopt rules to allow State-regulated financial institutions to provide secured loans to eligible entities in accordance with criteria established by the Department.

The annual interest rate for use of funds from the revolving loan fund established to implement the program is set at 3% per annum and the loan term extended from seven to ten years. The Department is authorized to adopt rules allowing loans at interest rates as low as 1% per annum for certain energy efficiency projects such as recycling and renewable energy.

The act became effective August 3, 2001. (BR)

## Miscellaneous

### LOB Snack Bar

S.L. 2001-41 (HB 740) amends the statutes to allow the Legislative Services Commission to operate the snack bar in the Legislative Office Building. Specifically, the act amends G. S. 111-42 to exempt the Legislative Office Building from the statutes requiring State agencies to give preference to visually handicapped persons in the operation of vending facilities on State property. The act amends the provisions of Article 11 of Chapter 66 of the General Statutes, imitating government involvement in merchandise sales and food operations in competition with private enterprise, to allow the operation of the LOB snack bar.

The act became effective April 26, 2001. (BR)

### Disposal of Community College Property

S.L. 2001-82 (HB 410). See **Education**.

### Museum of Art/Conservation Treatment

S.L. 2001-127 (HB 302) amends Article 11 of Chapter 66 of the General Statutes to allow the use of the North Carolina Museum of Art's Conservation Lab by the Regional Conservation Services Program of the North Carolina Museum of Art Foundation to provide conservation treatment for privately owned artwork. The act requires that the Lab give priority to publicly owned artwork.

The act became effective July 1, 2001. (BR)

### Notary Validation

S.L. 2001-154 (HB 700) amends North Carolina's curative statute for acts of notaries public that were not performed in strict compliance with the law. The act cures and validates all documents that bear a notary seal that does not bear the name of the notary exactly as it appears on the commission, or where the signature does not comport exactly with the name on the notary commission or seal. The act also extends the benefits of the notarial curative statute from acts performed on or before February 28, 1999 to acts performed on or before April 15, 2001.

The act became effective May 31, 2001. (WGR)

### Insurance for Public Works Projects

S.L. 2001-167 (SB 852). See **Insurance**.

## Rural Internet Access Authority Membership

S.L. 2001-171 (HB 1090) changes the ex officio membership of the chair of the North Carolina Rural Economic Development Center to the President of the Center.

The act became effective June 7, 2001. (BR)

## Amend NC Emergency Management Laws

S.L. 2001-214 (SB 300) amends the North Carolina Emergency Management Act of 1977 by establishing disaster declaration tiers. After the Governor or General Assembly declares a state of disaster, the Governor shall proclaim the disaster as either a Type I, Type II, or Type III disaster based upon the preliminary damage assessment provided by the Secretary of Crime Control and Public Safety (Secretary). The Secretary is charged with developing a system of damage assessment through which he or she can recommend the appropriate level of disaster declaration to the Governor.

A **Type I disaster** involves a local disaster event. To be declared a Type I disaster the event must meet all of the following criteria:

- A local state of emergency has been declared and a written copy of the declaration has been forwarded to the Governor.
- The preliminary damage assessment must meet or exceed the criteria established for the Small Business Administration Disaster Assistance Loan Program or the State infrastructure criteria provided in the act. The threshold for the SBA Disaster Assistance Loan Program is 25 homes and/or businesses damaged with a 40% uninsured loss.
- The President of the United States has not made a major disaster declaration under the Stafford Act for the event.

A Type I disaster declaration expires 30 days after issuance. It may be renewed by the Governor or the General Assembly in 30-day increments, not to exceed a total of 120 days.

A **Type II disaster** may be declared if the President of the United States has issued a major disaster declaration under the Stafford Act. Type II disaster declarations expire 6 months after issuance unless renewed by the Governor or the General Assembly in increments of 3 months not to exceed a total of 12 months.

A **Type III disaster** may be declared if the President makes a major disaster declaration and (1) the preliminary damage assessment indicates that the extent of the damage is reasonably expected to meet the threshold established for an increased federal share of disaster assistance or (2) the preliminary damage assessment is such that it prompts the Governor to call a special session of the General Assembly to deal with the provision of disaster recovery assistance. A Type III disaster declaration expires 12 months after issuance unless renewed by the General Assembly.

Type I disasters by definition do not meet the standards for major disaster declarations entitling affected individuals and units of government to federal disaster assistance. In authorizing State assistance for Type I disasters, the General Assembly is seeking to provide assistance comparable to what would be provided by the federal government under the Stafford Act. State programs are authorized to provide funding for both individual assistance and public assistance.

**Individual assistance** in the form of grants may include funding for:

- Provision of temporary housing and rental assistance.
- Repair and replacement of dwellings.
- Replacement of personal property.
- Repair or replacement of private vehicles.
- Medical or dental expenses.
- Funeral or burial expenses.
- Funding for the cost of the first year flood insurance premium.



**Public assistance** may include grants for:

- Debris clearance.
- Emergency protective measures.
- Roads and bridges.
- Crisis counseling.
- Assistance with public transportation needs.

In order to qualify for public assistance, however, an eligible entity must:

- Have a minimum of \$10,000 in uninsurable losses.
- Uninsurable losses must equal or exceed 0.5% of the annual operating budget.
- For state of disasters proclaimed after August 1, 2002, an eligible entity must have an approved hazard mitigation plan in place.
- For state of disasters proclaimed after August 1, 2002, an eligible entity must be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.

Eligible entities are required to provide non-State matching funds, not to exceed 25% of the eligible costs of the public assistance grant.

State disaster assistance for Type II and Type III disasters is designed to supplement the federal disaster assistance available under the Stafford Act under circumstances where the available federal assistance does not fully meet the needs of individuals and families. State disaster assistance authorized by the act includes State Acquisition and Relocation Funds, supplemental repair and replacement housing grants not to exceed \$25,000, and in the event of a Type III disaster proclamation, any additional programs authorized by the General Assembly.

The act also amends the powers and duties of the Governor for implementing the State Emergency Management Program. The Governor is authorized to use contingency and emergency funds to provide assistance in the event of a disaster. He is further authorized to reallocate other funds as are reasonably available within existing appropriations when the severity and magnitude of a disaster requires such action and the contingency and emergency funds are insufficient or inappropriate. Under prior law, the Governor could use these funds only with the concurrence of the Council of State.

The act became effective July 1, 2001, and applies to any state of disaster proclaimed on or after that date. (RZ, BR)

## **State Nature and Historic Preserve**

S.L. 2001-217 (SB 854). See **Environment and Natural Resources**.

## **Water and Sewer Authorities**

S.L. 2001-224 (SB 432). See **Local Government**.

## **Canadian Dealers/Salesmen Registration**

S.L. 2001-225 (SB 275). See **Commercial Law**.

## TTA Eminent Domain

S.L. 2001-239 (SB 719). See **Transportation**.

## Low-Income Housing Credit Program Exempt/APA

S.L. 2001-299 (SB 367) exempts the North Carolina Federal Tax Reform Allocation Committee, established under Article 51B of Chapter 143 of the General Statutes, from the rulemaking requirements of the Administrative Procedures Act with respect to the adoption of an annual qualified allocation plan. The Committee is authorized to manage the allocation of low-income housing tax credits provided by the federal government pursuant to the Tax Reform Act of 1984. The annual allocation of the tax credits is governed under Section 42 of the Internal Revenue Code that requires the State to allocate the credits pursuant to a qualified allocation plan. Any agency designated to administer the plan is also exempt from rulemaking requirements to the extent necessary to administer the plan. Prior to the adoption of the plan, however, the Committee shall (1) publish the proposed plan in the North Carolina Register at least 30 days prior to its adoption, (2) notify persons who have applied for the low-income housing tax credit in the previous year and any interested persons of the intent to adopt the plan, (3) accept oral and written comments on the proposed plan and (4) hold at least one public hearing.

The act became effective July 21, 2001. (BR)

## Geographic Information Coordinating Council

S.L. 2001-359 (SB 895) establishes the North Carolina Geographic Information Coordinating Council to develop policies regarding the use of geographic information, GIS systems, and other related technologies. (A GIS is a computer system capable of assembling, storing, manipulating, and displaying geographically referenced information, i.e. data identified according to their locations.) The responsibilities of the Council are set out in the statute, and the Council will be located in the Office of the Governor for organizational, budgetary, and administrative purposes. The Center for Geographic Information and Analysis will staff the Council and its committees.

The Council will consist of up to 35 members, as prescribed in the statute. Appointments are by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. Membership will also include specified members of the Council of State and the Governor's cabinet. The Council will meet at least quarterly, and is required to report at least annually to the Governor and the Joint Legislative Commission on Governmental Operations. The Council will have 6 named standing subcommittees. The appointing authorities are directed to complete their appointments within 60 days of the effective date of the bill.

The act became effective August 10, 2001. (BR)

## Register of Deeds/Business Reinstatement

S.L. 2001-390, Secs. 1-6 (HB 1073, Secs. 1-6) makes several changes regarding the recordation of instruments with the Register of Deeds.

**Fee Increases and the Automation Enhancement and Preservation Fund.** The act increases various fees collected by the register of deeds. It also requires each county to set aside each year 10% of the fees collected and place them a nonreverting Automation Enhancement and Preservation Fund to be used for computer and imaging technology by the office of register of deeds.

**Instrument Standards.** It amends the uniform requirements for instruments presented for registration as follows:

- It requires that instruments be 8 ½ x 11 inches or 8 ½ x 14 inches.
- It requires that instruments have blank margins of 3 inches at the top of the first page

and ½ inches on the remaining sides of the first page and on all sides of subsequent pages.

- It requires that instruments be typed or printed in black on white paper in at least 10-point font.
- It requires that instruments have text typed or printed on one side of the page only.
- It requires that instruments state the type of instrument at the top of the first page.
- It allows blanks in an instrument and corrections in an instrument to be completed in pen.
- It allows the register of deeds to register an instrument without collecting the fee for nonstandard documents when the instrument contains print in font size smaller than 10 points, if the register of deeds determines that the instrument is legible.

If an instrument does not meet these requirements, the register of deeds must still register the instrument after collecting a \$25 fee for nonstandard instruments.

With the exception of the recordation fee increase for right-of-way plans, which became effective retroactively on January 1, 2001, the fee increases became effective on January 1, 2002. The changes to the instrument standards become effective to instruments executed on or after July 1, 2002. (TG)

## Public Conflicts of Interest

S.L. 2001-409 (HB 115), as amended by S.L. 2001-487, Sec. 44 (HB 338, Sec. 44), amends G.S. 14-234, Director of Public Trust Contracting for His Own Benefit, to clarify the affected persons, clarify the prohibited acts and expand the limited exemptions, and also creates new statutes mirroring G.S. 14-234 applicable to hospitals. G.S. 14-234 prohibits "self-dealing by any person appointed or elected" in certain circumstances and also sets forth the exemptions from those prohibitions. The act raises the population caps and the monetary caps set forth in a limited exemption allowing elected officers and specified appointed officials to enter into contracts with the board on which the officer serves, provided the contract is not subject to Article 8 of Chapter 143. The population threshold is raised from 7,500 to 15,000 people and the monetary caps are raised from \$10,000 for medically related services to \$12,500 and from \$15,000 for contracts for other goods or services to \$25,000. (*Effective April 1, 2002*)

The chart below compared G.S. 14-234 to the act:

<b><u>Changes to G.S. 14-234</u></b>		
	<b><u>Existing Language</u></b>	<b><u>S.L. 2001-409</u></b>
<b>Prohibitions</b>	Any person appointed or elected a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested who becomes an undertaker, or makes any contract for his own benefit, under such authority, or is in any manner concerned or interested in making such contract (or in the profits) either privately or openly, singly or jointly with another is guilty of a misdemeanor.	<ul style="list-style-type: none"> <li>• Public officer or employee who is involved in making or administering a contract may not derive a benefit from the contract, unless there is an exception provided by law.</li> <li>• Public officer or employee who will derive a benefit from a contract with the public agency served may not attempt to influence any person involving in making or administering the contract.</li> <li>• Public officer or employee may not solicit or receive any gift, reward, or promise of reward in exchange for</li> </ul>

		recommending, influencing, or attempting to influence the award of a contract.
<b>Persons Affected</b>	Person appointed or elected a commissioner or director.	Public officer or employee, or that person's spouse.
<b>Statewide Exemptions</b> (Applicable if official does not vote on the contract.)	<ul style="list-style-type: none"> <li>• Contracts with banks, banking institutions or savings and loan associations, or with public utilities.</li> <li>• Contracts for services or facilities or supplies furnished under public assistance programs.</li> <li>• Grants under the Agriculture Cost Share Program for Nonpoint Source Pollution Control, under specified conditions.</li> <li>• Grants from the Tobacco Trust Fund.</li> </ul>	<ul style="list-style-type: none"> <li>• Contracts with banks, banking institutions or savings and loan associations, or with public utilities.</li> <li>• Contracts for services or facilities or supplies furnished under public assistance programs.</li> <li>• Grants under the Agriculture Cost Share Program for Nonpoint Source Pollution Control, under specified conditions.</li> <li>• Grants from the Tobacco Trust Fund.</li> <li>• Real property conveyed under a public condemnation.</li> <li>• Employment relationship between the public agency and the spouse of the public officer.</li> <li>• Public hospitals subject to G.S. 131E-14.2.</li> <li>• Public hospital authority subject to G.S. 131E-21.</li> </ul>
<b>Limited Exemption based on Population</b> (Only those item altered are stated.)	<ul style="list-style-type: none"> <li>• Applies to elected offices, including board of education, in cities with populations no more than 7,500.</li> <li>• Applies to elected offices including board of education and selected appointed offices spanning more than one county, in counties in which there is no city with a population greater than 7,500.</li> </ul>	<ul style="list-style-type: none"> <li>• Applies to elected offices, including board of education, in cities with populations no more than <b>15,000</b>.</li> <li>• Applies to elected offices including board of education and selected appointed offices spanning more than one county, in counties in which there is no city with a population greater than <b>15,000</b>.</li> </ul>
<b>Conditions of Limited Exemption based on Population</b> (Only those items altered are stated.)	<ul style="list-style-type: none"> <li>• Contract for medically related services cannot exceed \$10,000.</li> <li>• Contract for other goods or services cannot exceed \$15,000.</li> </ul>	<ul style="list-style-type: none"> <li>• Contract for medically related services cannot exceed <b>\$12,500</b>.</li> <li>• Contract for other goods or services cannot exceed <b>\$25,000</b>.</li> </ul>
<b>What happens to</b>	The statute is silent.	The contract is void. The contract

<p><b>the contract if there is a violation?</b></p>		<p>may continue in effect until an alternative can be arranged with the approval of the Local Government Commission or the State Director of the Budget, depending on the unit of government.</p>
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Additionally the act clarifies that a member of a county board of commissioners or a municipal board of commissioners may be excused from voting when that member is prohibited from voting by G.S. 14-234. The act also deals with hospitals and hospital authorities, enacting similar provisions for both. Prohibited are the following acts by a member of the board of directors or an employee:

- Acquisition of any interest, direct or indirect, in any hospital facility.
- Acquisition of any interest, direct or indirect, of any property included or planned to be included in a hospital facility.
- Possessing any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility. Employment contracts are exempt. Additionally, contracts with banks or banking institutions, savings and loan associations and public utilities in the regular course of business are exempt if the member having an interest does not vote.

To have an interest, direct or indirect, a person needs to own more than 10 % of the stock of a corporation or of the business entity. If the person owns or controls an interest, direct or indirect, in property included or planned to be included in a hospital facility, then that person must immediately disclose that fact in writing to the board.

Except as noted above, the act is effective July 1, 2002 and applies to acts and offenses committed on or after that date. (EC)

## Limitations on Use of State Aircraft

S.L. 2001-424, Sec. 6.12 (SB 1005, Sec. 6.12) places restrictions on the use of State aircraft in uncodified language. No airplane or helicopter operated or maintained with State funds may be used to transport any member of a board or commission to or from a meeting of the board or commission to which that member is appointed unless one of the following is true:

The member is an elected official or head of a principal State department who serves on the board or commission by virtue of his or her office.

The member is traveling with another member who is an elected official who serves on the board or commission by virtue of his or her office.

The member is traveling on an airplane or helicopter that is flying to a particular destination for official State business other than a meeting of a board or commission.

The Director of the Office of State Budget and Management has approved the use of the State airplane or helicopter as an exceptional circumstance.

This section became effective July 1, 2001. (EC)

## Revise Treasurer Investment Authority

S.L. 2001-444 (HB 327) makes several technical and substantive changes to the State Treasurer's investment authority.

**General Fund, Highway Fund, and Highway Trust Fund Assets.** It amends the statute governing the investment of funds held by the State Treasurer to the credit of the General Fund, the Highway Fund, and the Highway Trust Fund by:

- Removing investment options that no longer exist.
- Aligning reporting requirements with the Department's ability to comply and with long established reporting dates to the Governmental Operations Committee. Quarterly statements are to be issued in February, May, August, and November of each year.
- Adding the President Pro Tempore of the Senate and Speaker of the House to the list of persons who are provided quarterly statements.
- Repealing a subsection that provides for management of the proceeds of sales of stock in the NC Railroad Company or the Atlantic and NC Railroad Company.

**Special Funds.** It amends the statute governing the investment of funds held by the State Treasurer to the credit of "special funds", which includes, among many others, the Teachers' and State Employees' Retirement System, by:

- Allowing the Treasurer to invest in obligations of companies whose obligations are rated BBB. Under prior law, the obligations had to bear one of the three highest ratings. This change allows the obligations to bear the fourth highest rating.
- Removing the following investment option because it no longer exists: investing funds in notes secured by mortgages issued by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within NC.
- Authorizing the Treasurer to invest assets from the Retirement Systems in limited partnerships and Limited Liability Companies (LLC).
- Providing that investment assets will be managed based on market value, rather than book value, because that is the industry standard.
- Adding NC National Guard Pension Fund to list of retirement systems that may invest in all authorized investment classes.
- Providing that the Treasurer can invest up to 65% of the Retirement Systems' assets in stocks, either directly or collectively. Previously, the Treasurer was limited to 50%.
- Authorizing the Treasurer to invest up to 5% of the Retirement Systems' assets in limited partnership interests in a partnership or in interests in a LLC if the primary purpose of the partnership or LLC is to invest in public or private debt, public or private equity, or corporate buyout transactions.
- Requiring that the two public members on the Treasurer's Investment Advisory Committee have experience in one or more of the following areas: investment management, real estate investment trusts, real estate development, venture capital investment, or absolute return strategies.

These changes encompass not only the traditional venture capital investing opportunities, but also absolute return strategies. Absolute return strategies include high yield bonds, merger arbitrage, convertible bond arbitrage, and market neutral equity positioning, often referred to as "hedge strategies".

**Administration of Investment Programs.** It amends the statute governing administration of the State Treasurer's Investment programs by:

- Clarifying that ownership by fund participants is on a "total return" basis, which includes both realized and unrealized components, as opposed to the "cash return" component only.
- Removing the requirement to forecast annual investment yield targets.

The act became effective October 1, 2001. (CA, TG)

## Notary Public Authority Misrepresentation

S.L. 2001-450 (HB 955), as amended by S.L. 2001-487, Sec. 121 (HB 338, Sec. 121), amends the notary public laws to prevent misleading and fraudulent advertising by notaries public and to prevent notaries from using their office for purposes of giving legal or immigration advice, unless otherwise licensed or certified to do so. The act also addresses the duty of notaries when advertising notary services in a foreign language, other than English. The act amends the notary

public law to address problems that have arisen from confusion of the translation of the words "notary public" into foreign languages, particularly Spanish, which has resulted in the implication that a nonlawyer notary is authorized to give legal or immigration advice.

The act prohibits a notary from advertising in a manner that gives a false or misleading impression of the notary's powers and duties.

The act adds provisions to G.S. 10-9 the law governing notary powers and limitations. The new Subsection (g) requires a nonlawyer notary who advertises notary services in a language other than English, to disclose in English and the foreign language, that the notary is not an attorney. Subsection (h) prohibits a nonlawyer notary from representing that the notary is an immigration consultant unless the Board of Immigration Appeals accredits the notary. Subsection (i) prohibits a nonlawyer notary from practicing law. Subsection (j) requires a notary who advertises in a foreign language to post a schedule of fees established by law that the notary may charge in both English and the foreign language.

The act authorizes the Secretary of State to seek an injunction for violation of the Notary Public Act and makes it clear that the North Carolina State Bar has the authority to police and enforce the unauthorized practice of law. This section also makes it an unfair or deceptive trade practice for a nonlawyer notary to give immigration or legal advice in violation of the law.

The act authorizes the Secretary of State to study and report to the 2002 Session on other statutory changes that might need to be made in the notary law and other related statutes.

The act became effective January 1, 2002, and applies to acts committed on or after that date. (WR)

## **State Fruit and State Berries**

S.L. 2001-488 (HB 382) amends Chapter 145 of the General Statutes and adopts the Scuppernon grape as the official State fruit. The act also names the strawberry as the official red berry of the State and the blueberry as the official blue berry of the State.

The act became effective December 16, 2001. (BR)

## **Studies**

### **Legislative Research Commission**

#### **2001 Studies Bill**

S.L. 2001-491, Sec. 2.1(4)(g) (SB 166, Sec. 2.1(4)(g)) authorizes the Legislative Research Commission to study the feasibility of establishing a State energy program and the use of alternative financing agreements to finance energy conservation project in State facilities.

This section became effective December 19, 2001. (TG)

#### **Economic Impact of State's Tourism Industry**

S.L. 2001-491, Sec. 2.1 (13) a. (SB 166, Sec. 2.1 (13) a) authorizes the Legislative Research Commission to study North Carolina's tourism industry and its economic impact statewide. An interim report of the Commission's findings and recommendations may be made to the 2002 Session of the 2001 General Assembly, and a final report may be made to the 2003 General Assembly. (KCB)

## **New Independent Studies/Commissions**

### **Joint Legislative Growth Strategies Oversight Committee**

S.L. 2001-491, Secs. 3.1-3.3 (SB 166, Secs. 3.1-3.3) creates the Joint Legislative Growth Strategies Oversight Committee and authorizes the Committee to examine growth and development issues and strategies in the state in order to make recommendations on ways to promote comprehensive and coordinated local, regional, and State growth planning and public investment. The Committee is composed of twelve members with six members of the Senate appointed by the President Pro Tempore of the Senate and six members of the House of Representatives appointed by the Speaker of the House of Representatives. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair. Members will serve two year terms, except the terms of the initial members. Prior to its expiration on January 16, 2005, the Committee shall report to the General Assembly on its activities.

These sections became effective January 15, 2002. (AC)

## **Referrals to Existing Commissions**

### **North Carolina Sentencing and Policy Advisory Commission**

S.L. 2001-424, Sec. 25.8 (SB 1005, Sec. 25.8). See *Criminal Law and Procedure*.

## **Referrals to Departments, Agencies Etc.**

### **Commerce Study/Consolidate Business and Industry Division Regional Offices and Regional Economic Development Commissions**

S.L. 2001-424, Sec. 20.5 (SB 1005, Sec. 20.5) requires the Department of Commerce to study the feasibility of consolidating each of the Business and Industry Division regional offices (B&I) with a Regional Economic Development Commission (Commission) office, and in studying the issue to:

- Compare the organization, budget and performance of specified existing shared offices with specified B & I offices that do not share offices with the Commission;
- Assess duplication of effort between B & I offices and Commission offices;
- Evaluate how much the existing Lenoir and Bryson City B&I offices add value cost-effectively to the Asheville office services and consider ways to assure the same level of service could be provided if the Lenoir and Bryson City offices were eliminated or merged into the Asheville office;
- Estimate costs of closing B&I offices in Charlotte, Greenville, and Fayetteville and consolidating them with Commissions in Charlotte, Kinston, and Elizabethtown, respectively, estimate costs of closing B&I offices in Lenoir and Bryson City and consolidating them with the Asheville of described in subdivision (4) of this section would produce any net savings and, if affirmative, identify the sources of the savings.

The Department was required to report its findings and recommendations to the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources by



January 15, 2002.

This section became effective July 1, 2001. (FF)

## Chapter 20 Taxation

Cindy Avrette (CA), Martha Harris (MH), Canaan Huie (CH),  
Mary Shuping (MS), Martha Walston (MW) and others  
(See references by initials on page 269 of this publication.)

### Enacted Legislation

#### Tax<sup>1</sup>

#### **Retirement Home Tax Change**

S.L. 2001-17 (HB 193) provides a property tax exclusion for certain qualified retirement facilities that provide charity care and/or community benefits. The percentage of the exclusion depends upon the percentage of the facility's resident revenue that is provided in charity care, in community benefits, or in both. Estimates based on the best information available suggest this act could result in a loss of county revenues of \$1.7 million to \$2.5 million. Fiscal Research believes the actual cost of the exemptions could be higher. As a result, the range listed is actually a minimum estimate.

The act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. In addition, an application for the benefit provided in this act for the 2001-2002 tax year is timely if it is filed on or before September 1, 2001. (CH)

#### **Lease-Purchase up to Three Prisons**

S.L. 2001-84 (SB 25) clarifies the procedure and financing for the State's authority to lease-purchase up to three close security correctional facilities. In 1999, the General Assembly authorized the Department of Correction to contract with private firms for the construction of prisons totaling up to 3000 cells. The prisons will be operated by the State under a lease with a schedule for purchase of the prisons over a period of up to 20 years. The question of whether the prisons could be financed tax-exempt did not arise until after the 1999 legislation was enacted. This act provides that although the initial construction loan for the prison must be obtained by the vendor on a private, taxable basis, the State's acquisition of the constructed prisons will be financed with tax-exempt obligations. The act will save the State millions of dollars by clarifying the authorization of tax-exempt financing.

The act became effective May 17, 2001. (MW)

#### **Extend Tax Deadline**

S.L. 2001-87 (HB 150) waives the penalties for failure to obtain a license, failure to file a return, and failure to pay taxes when due, if these activities should be performed during the period of time federal tax-related deadlines have been extended by the Secretary of the Treasury in an area of

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<sup>1</sup> For a more detailed explanation of the tax law changes, see the document "*2001 Tax Law Changes*". The document can be found in the Legislative Library, located in Room 500 of the Legislative Office Building, or on the General Assembly website - <http://www.ncga.state.nc.us> .

the State because of a Presidentially declared disaster. There is no fiscal impact because the act conforms State law to the actual administrative practice of the Department of Revenue.

The act became effective on May 17, 2001. (CH)

## Property Tax Amendments

S.L. 2001-139 (SB 162) makes the following changes to the property tax laws, as recommended to the Revenue Laws Study Committee by the Department of Revenue, the Institute of Government, and the Association of Assessing Officers:

- It clarifies the application process for property tax exemptions and exclusions.
- It gives the assessor the authority to remove a property's preferential tax classification if the taxpayer does not provide the assessor with the information requested to verify the property's qualifications for the preferential tax classification. It provides that an owner has 60 days, rather than 30 days, to respond to the assessor's request for information. It also provides that any deferred taxes that were paid as a result of a revocation of present-use value status must be refunded to the taxpayer once the taxpayer has responded to the assessor's request for information unless the information discloses that the property no longer qualifies for the classification.
- It gives all boards of equalization and review the authority to meet after its adjournment date to hear cases related to use value, exempt property, discoveries, and motor vehicle valuation.
- It clarifies the changes allowed in a non-reappraisal year.
- It shortens the waiting period for in rem foreclosures.
- It conforms the interest rate on unpaid motor vehicle taxes to the interest rate due on other unpaid property taxes.

The act's fiscal impact is expected to be minimal. The part of the act that clarifies the changes allowed in a non-appraisal year becomes effective for taxes imposed for taxable years beginning on or after July 1, 2002. The part of the act that shortens the waiting period for in rem foreclosure proceedings became effective July 1, 2001, and applies to in rem foreclosure proceedings begun on or after that date. The part of the act that conforms the interest rate on unpaid motor vehicle taxes to other unpaid property taxes became effective for taxes imposed for taxable years beginning on or after July 1, 2001. The remainder of this act became effective on May 31, 2001. (MW)

## Various Motor Fuel Tax Changes

S.L. 2001-205 (SB 967) clarifies information sharing, provides a procedure for fuel tax refunds using third party credit cards, modifies refunds for kerosene used for certain non-highway purposes, and makes technical changes to the motor fuel tax laws, as requested by the Department of Revenue. The acceleration of kerosene tax refunds will produce a minor loss of interest revenue to the Highway Fund/Highway Trust Fund, and a corresponding minor gain of interest for the General Fund because of sales tax paid on exempt motor fuels.

The act became effective October 1, 2001, except for the section allowing the sharing of information, which became effective June 18, 2001. (MH)

## Special Obligation Bonds for Water/Sewer

S.L. 2001-238 (SB 123) expands local governments' existing authority to issue special obligation bonds for solid waste projects to include water and sewer projects. A special obligation bond does not require a vote of the people because it does not pledge the taxing power or full faith and credit of the government issuing the bond. The bond is secured by a pledge of designated

nontax revenues. Special obligation bonds are sometimes more appropriate than installment purchase financing for solid waste projects because lenders are reluctant to take a security interest in solid waste projects due to potential liability for environmental contamination. The act will have no direct impact on State or local revenues or expenditures. Once the financing option is used, the local unit will incur debt service requirements. These needs will be funded from the dedicated revenue sources.

The act became effective June 23, 2001. (CA)

## **Make Meals Tax Penalties Uniform**

S.L. 2001-264 (HB 1448) makes all local meals tax penalties uniform by applying the existing State sales and use tax penalty charges to meals taxes. The State sales and use tax law provides for the following penalty amounts:

- The penalty for failure to file is 5% of the tax due per month, up to a maximum of 25%.
- The penalty for failure to pay tax is 10% of the tax due.
- In the case of negligence, there is a 10% penalty, which increases to 25% if the amount of the deficiency is more than 25% of the tax liability.

The act became effective October 1, 2001. (MW)

## **Correct Dry-Cleaning/White Goods Laws**

S.L. 2001-265 (HB 1062) makes two changes to the tax laws concerning the dry-cleaning solvent tax and the white goods tax. The act moves up the effective date of a tax increase on dry-cleaning solvents from October 1, 2001, to August 1, 2001, and it restores a prohibition on the taxation of white goods by local governments that was mistakenly repealed in an earlier session. The act generates an additional \$87,572 for the Dry-Cleaning Solvent Cleanup Fund. This amount represents the revenue estimated to be generated during the months of August and September 2001 by the dry-cleaning solvent tax. (CA)

See also **Environment and Natural Resources**.

## **Electronic Listing for Property Taxes**

S.L. 2001-279 (SB 365) authorizes counties to allow electronic listing of business personal property and to extend from January 31 to June 1 the deadline for listing business personal property electronically.

The act became effective July 13, 2001. (MH)

## **Property Tax Homestead Exclusion**

S.L. 2001-308 (HB 42) amends the property tax homestead exclusion and gives local governments the authority to lower their property taxes as a result of unanticipated revenues.

The act amends the property tax homestead exclusion in three ways:

- It expands the homestead exclusion amount from \$20,000 to the greater of \$20,000 or 50% of the tax value of the property.
- It increases the income eligibility amount from \$15,000 to \$18,000, and for every year thereafter, it adjusts the income amount by a percentage equal to the cost of living adjustment (COLA) percentage used to increase social security benefits for the preceding calendar year.

- It extends the time allowed for a person to submit an application for the exclusion from April 15 to June 1.

The expansion of the homestead exclusion is expected to lower local government revenues by approximately \$12 million annually. The act does not provide for any State reimbursement of this loss. This part of the act becomes effective for taxes imposed for taxable years beginning on or after July 1, 2002.

The act also gives local governments the authority to lower their property tax rates as a result of unexpected revenues received after July 1, 2001. This is a one-time change that expired October 1, 2001. Under existing law, local governments cannot make a change in their property tax rates after July 1 without legislative authorization, because G.S. 159-13 requires that they adopt a budget ordinance no later than July 1. This change was proposed after Governor Mike Easley placed the \$95 million April inventory tax reimbursement in escrow because of the budget shortfall and then unexpectedly released the reimbursement to the local governments effective June 30, 2001. Anson County was the only county that lowered its property tax rate from 90¢ to 87¢ on the \$100 of appraised value of property subject to taxation. (MW)

## **Enforce Tax Compliance & Equality**

S.L. 2001-327 (HB 1157), as amended by S.L. 2001-427 (HB 232), makes three corporate tax law changes:

- It clarifies that income from using trademarks in this State is taxable to this State and provides a reporting option for royalty payments between related parties. This part of the act is effective for tax years beginning on or after January 1, 2001.
- It provides that franchise tax will apply equally to corporate assets held by affiliated Limited Liability Companies (LLC) so that a corporation cannot avoid paying franchise tax on its assets by transferring them to an affiliated LLC. It also restates the fraud penalty for willful evasion of franchise tax on these assets. This part of the act is effective for taxes due on or after January 1, 2002.
- It piggybacks the federal dividends received deduction for State corporate income tax purposes. This part of the act is effective for tax years beginning on or after January 1, 2001.

The act is expected to increase General Fund revenues by \$61.3 million for fiscal year 2001-02 and by \$64.3 million for fiscal year 2002-03. (CA)

## **Modify Partnership Tax Credit**

S.L. 2001-335 (HB 146) corrects and clarifies the law governing allocation of partnerships' tax credits, so that any dollar amount limitation on a credit allowed to a partnership applies to the total credit. The limited amount is then allocated by the partnership among the partners on a proportional basis. There is no available data to determine the General Fund revenue gain that will result from this act.

The act became effective beginning in the 2002 tax year, except that its effect on real property donation credits is delayed until 2005. (MH)

## **Streamlined Sales and Use Tax Agreement**

S.L. 2001-347 (SB 144), as amended by S.L. 2001-489 (HB 748), establishes the Uniform Sales and Use Tax Administration Act. It also simplifies North Carolina's sales and use tax laws by adopting many of the uniform provisions required under the Act to be adopted before the State can participate in the Streamlined Sales and Use Tax Agreement. The purpose of this Agreement is to develop a substantially simplified sales tax system that can better accommodate interstate commerce and thereby help equalize the playing field between remote (catalog and internet) vendors and Main

Street merchants. Nineteen other states and the District of Columbia enacted legislation in 2001 authorizing participation in the Streamlined Sales and Use Tax Agreement: Arkansas, Florida, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, North Dakota, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Wisconsin, and Wyoming. The changes are expected to create a small but unquantifiable revenue increase.

The part of the act that establishes the Uniform Sales and Use Tax Administration became effective August 8, 2001 and expires January 1, 2006, unless one of the following occurs: (i) 15 states have signed the Streamlined Sales and Use Tax Agreement, or (ii) states representing a combined resident population equal to at least ten percent (10%) of the national resident population, as determined by the 2000 federal decennial census, have signed the Agreement. The part of the act that shifts mill machinery and mill machinery parts and accessories from a sales tax to a privilege tax of the same rate, becomes effective January 1, 2006. The remainder of the act became effective January 1, 2002. (MW)

## DOR Debt Collection Changes

S. L. 2001-380 (SB 353) Since 1999, the General Assembly has authorized a pilot program for the collection of tax debts owed by nonresidents and a study of the Department of Revenue's delinquent collection practices. "Project Collect Tax", an initiative of the Department to collect at least \$100 million in overdue taxes in the 2001-2003 biennium, is an outgrowth of these efforts. S.L. 2001-380 (SB 353) enables the Department to execute its "Project Collect Tax" by making the following changes in the tax laws:

- It makes permanent the Department's authority to use collection agencies to collect out-of-State tax debts.
- It authorizes the Department to use collection agencies to collect in-State tax debts for two years.
- It imposes a collection assistance fee of 20% on all tax debts that remain unpaid for 90 days after they become final.
- It allows the Department to use the receipts from the collection assistance fee to provide the resources needed for "Project Collect Tax".

The Department plans to collect \$50 million in additional revenue in FY 2001-02 and the same amount in FY 2002-03. This additional revenue was included in the Current Operations and Capital Improvements Appropriations Act of 2001, S.L. 2001-424.

The act became effective on August 20, 2001. (CA)

## Car Property Tax Credit

S.L. 2001-406 (HB 1431) prevents double property taxation on a motor vehicle whose tax year changes due to a change in registration. It allows the county tax collector to give a taxpayer a credit against the taxes owed on a motor vehicle if both of the following conditions are met:

- The tax year for the vehicle changes because of a change in the vehicle's registration year for a reason other than the transfer of its registration plates to another vehicle.
- The vehicle's new tax year begins before the expiration of the vehicle's original tax year.

The amount of the credit is equal to 1/12 of the amount of taxes paid on the vehicle for its original tax year times the number of full calendar months remaining in the original tax year as of the first day of the new tax year. The credit is given in the form of a release against the taxpayer's taxes for the new tax year. To obtain the credit, the taxpayer must apply within 30 days after the taxes for the new tax year are due and must provide the county tax collector information establishing the vehicle's original tax year, the amount of taxes paid on the vehicle for that year, and the reason for the change in registration.

The act became effective September 14, 2001. (MH)

## Mulch Blower Fuel Tax Refunds

S.L. 2001-408 (HB 170) allows a commercial vehicle that delivers and spreads mulch and similar materials and that uses a power takeoff to deliver or unload the materials to receive a partial annual refund of the motor fuel taxes paid on the fuel consumed by the vehicle. The annual partial refund of the fuel taxes is equal to 33 1/3% of the following: (i) the flat cents-per-gallon rate in effect for the year for which a refund is claimed, plus (ii) the average of the two variable cents-per-gallon rates in effect during that year, less (iii) the amount of sales and use tax due on the fuel. This formula assumes that one-third of the fuel that is used by the vehicle is used in its mixing, compacting, or unloading operations as distinguished from propelling the vehicle on the roads. With only three companies and eight trucks that qualify for this refund, the cost to the Highway Fund and Highway Trust Fund is approximately \$2,000 per year. There is a \$200 to \$300 gain to the General Fund from sales tax.

The act became effective September 14, 2001 and applies to motor fuel consumed on or after January 1, 2001. (CH)

## Revenue Laws Technical Changes

S.L. 2001-414 (SB 165) makes numerous technical and clarifying changes to the revenue laws and related statutes. The Goodness Grows license plate change is effective retroactively to August 2, 2000. The streamlined sales tax conforming changes are effective January 1, 2002. The remainder of the act became effective September 14, 2001. (MH)

## Reallocate Clean Water Bond Funds

S.L. 2001-416 (SB 247) does two things:

- It reallocates \$74.1 million of Clean Water Bonds proceeds remaining in a loan program administered by DENR to related grant programs administered by the Rural Economic Development Center and for related administrative expenses. Converting loan funds to grant funds will reduce loan repayments that would have otherwise been credited to the General Fund.
- It provides that Clean Water Bonds, Natural Gas Bonds, and Public School Building Bonds cannot be issued during the period September 1, 2001, and January 1, 2002. Delaying the issuance of the bonds until after January 1, 2002, moves their repayment costs into the 2002-2003 fiscal year. The act provides that payments to local governments or payments to match federal funds that otherwise would have been made from the proceeds of Clean Water Bonds issued during the period September 1, 2001, and January 1, 2002, may be paid from General Fund cash balances.

The act does not impact the first year of the biennium. It reduces General Fund revenue by \$2.5 million in fiscal year 2002-03, \$5.1 million in fiscal year 2003-04, \$7.6 million in fiscal year 2004-05, and \$7.5 million in fiscal year 2005-06. The Department of Natural and Economic Resources and the Rural Economic Development Center administer the loans and grants affected. The enactment of this act does not affect the budget requirements of either entity.

The act became effective September 22, 2001. (CA)

## The Appropriations Act of 2001

S.L. 2001-424 (SB 1005), as amended by S.L. 2001-476 (SB 748), and 2001-489 (HB 748), 2001-497 (HB 72) makes the following tax law changes:

- Sales Tax Increase. It increases the State sales tax from 4% to 4.5%, effective October 16, 2001. The tax increase is repealed July 1, 2003. This provision is expected to generate \$246.3 million in General Fund revenues for fiscal year 2001-02 and \$398.7 million for fiscal year 2002-03.
- Local Option Sales Tax. It authorizes all counties of the State to levy a one-half cent sales tax. Like the State sales tax, this new tax would not apply to food. The earliest the new tax could become effective in a county is July 1, 2003. One-half of the net proceeds of the tax would be allocated on a point-of-origin basis and the other one-half would be allocated on a per capita basis.
- State Reimbursement Payments to Local Government. It repeals all of the State's reimbursement payments to local governments, effective beginning with the 2003-2004 fiscal year. This provision will produce a General Fund revenue gain of \$333.4 million annually, beginning in fiscal year 2003-04. State reimbursements consist of reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.
- Local Government Hold-Harmless. It provides an annual hold-harmless distribution from the State's General Fund to counties and cities to ensure that none of them would lose money when the local government reimbursements repealed by this act are netted against the estimated proceeds of the sales tax if it were levied in each county as of July 1, 2003. This provision is estimated to reduce General Fund revenues by \$23.3 million in fiscal year 2003-04.
- Sales Tax Holiday. As amended by S.L. 2001-476, it provides that certain purchases made during the first weekend in August of each year are exempt from the State and local sales and use tax, beginning in August 2002. The exempt purchases include clothing and school supplies with a sales price of \$100 or less per item. The sales tax holiday will also apply to computer, printers, and printer supplies, and education computer software with a sales price of \$3,500 or less per item and to sport or recreational equipment with a sales price of \$50 or less per item. This provision produces a General Fund revenue loss of \$8.4 million in fiscal year 2002-03.
- Satellite TV. It established a 5% State sales tax on the gross receipts derived from providing satellite TV services, effective January 1, 2002. The gross receipts are not subject to the local 2% sales tax. Currently, cable TV may be subject to a local franchise tax of up to 5%. Satellite TV is not subject to a local franchise tax. This part of the act equalizes the tax treatment between satellite TV and cable TV by providing that both are subject to a 5% tax on their gross receipts. This provision will generate \$9.8 million in General Fund revenue for fiscal year 2001-02 and \$21.7 million for fiscal year 2002-03.
- Personal Income Tax. It adds a fourth tax bracket with a marginal tax rate of 8.25% on taxable income over \$200,000 for married couples filing jointly, over \$160,000 for heads of household, over \$120,000 for unmarried individuals, and over \$100,000 for married individuals filing separately. This change will affect approximately 2% of North Carolina taxpayers. The new bracket will be in effect only for the 2001, 2002, and 2003 tax years. It is expected to generate \$125.5 million in General Fund revenues for fiscal year 2001-02 and \$102.9 million in fiscal year 2002-03.
- "Marriage Penalty" Tax. It will reduce North Carolina income taxes on married couples who claim the standard deduction by increasing the amount of the standard deduction for married couples from \$5,000 to \$6,000, so that it will be twice that of a single taxpayer. The increase in the deduction is phased in over the 2002 and 2003 tax years. The standard deduction for married persons filing separately is one-half that for a married couple filing jointly, so this act phases it up from \$2,500 to \$3,000 over the 2002 and 2003 tax years. This provision is expected to benefit 762,340 couples in tax year 2002. It will reduce General Fund revenues in fiscal year 2002-03 by \$32 million.



- Child Tax Credit. It increases the \$60 per child tax credit to \$75 for the 2002 tax year and \$100 for the 2003 tax year. The child tax credit is for taxpayers who have dependent children and have family adjusted gross income below \$100,000 for a married couple and \$80,000 for a head of household. This provision will reduce General Fund revenues by \$54.8 million in fiscal year 2002-03.
- Income Tax Credit for Child Health Insurance. It repeals the refundable individual income tax credit for certain taxpayers who purchase health insurance for their dependent children for the 2001 tax year. This provision is expected to increase General Fund revenues by \$18.9 million annually.
- Gross Premiums Tax. It imposes a uniform gross premiums tax on Health Maintenance Organizations and on Article 65 corporations. As amended by S.L. 2001-489, the tax rate is 1.1% for taxable years beginning on or after January 1, 2003 and 1% for taxable years beginning on or after January 1, 2004. Under current law, Article 65 corporations, such as Blue Cross/Blue Shield and Delta Dental Corporation, pay a gross premiums tax of 0.5%. HMOs do not pay a gross premiums tax; however, they are subject to the State's corporate income and franchise tax levies. Other insurance providers pay a gross premiums tax of 1.9%. Companies that pay a gross premiums tax are automatically exempt from corporate income and franchise taxes. This section subjects all insurance carriers to the gross premiums tax in lieu of the State's corporate income and franchise taxes. This provision is expected to increase General Fund revenues by \$28.2 million in fiscal year 2002-03.
- Spirituos Liquor Tax.
  - It imposes a 6% sales tax on spirituous liquor, effective December 1, 2001. This provision will increase General Fund revenues by \$11.9 million in fiscal year 2001-02 and by \$24.7 million in fiscal year 2002-03.
  - It reduces the excise tax on spirituous liquor from 28% to 25%, effective February 1, 2002. This provision will reduce General Fund revenues by \$3.5 million in fiscal year 2001-02 and by \$10.9 million in fiscal year 2002-03.
- Highway Use Tax for Non-Commercial Vehicles. It deletes the \$1,500 cap on the 3% highway use tax on all non-commercial vehicles except recreational vehicles. It also exempts from the highway use tax fire trucks and rescue vehicles owned by volunteer fire departments and volunteer rescue squads. These changes became effective for certificates of title issued on or after October 1, 2001. The estimated net revenue gain from these two tax changes is \$1.7 million for fiscal year 2001-02 and \$2.4 million for fiscal year 2002-03. This net revenue gain will be credited from the Highway Trust Fund to the General Fund each year on July 1. This transfer reflects the fact that before 1989, sales tax on motor vehicles was a General Fund revenue source.
- Telecommunications. It changes the rate set for telecommunications in S.L. 2001-430 from 4.5% to 6%, effective January 1, 2002. At a 6% tax rate, this tax is expected to generate \$34.4 million in fiscal year 2001-02 and \$87.9 million in fiscal year 2002-03. (CH)

## Budget Revenue Provisions

S.L. 2001-427 (HB 232) changes the following fee and budget-related items:

- Insurance Regulatory Charge. It sets the insurance regulatory charge at 6.5% for the 2001 calendar year. The charge is expected to generate \$23.82 million for the 2001-2002 fiscal year. This provision became effective September 28, 2001.
- Utilities Regulatory Fee.
  - It sets the utilities regulatory fee at 0.1% for the 2001-2002 tax year. The fee, which is used to fund the operations of the Utilities Commission and the Public Staff,

- is expected to produce \$10.5 million in fiscal year 2001-02. This provision became effective July 1, 2001.
- It sets the public utility regulatory fee imposed on electric membership corporations at \$200,000. This provision became effective July 1, 2001.
  - Nonresident Search Fee. It increases the nonresident search fee from \$10 to \$25. The increased fee will generate approximately \$50,000 to \$60,000 each year. This section became effective January 1, 2002.
  - Update IRC. It updates the reference to the Internal Revenue Code from January 1, 2000, to January 1, 2001. 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. The section further provides that the federal tax law changes that could increase an individual's or a corporation's State taxable income for the 2000 tax year will not become effective for the 2000 tax year but will instead apply only to taxable years beginning on or after January 1, 2001. The conforming changes will reduce General Fund revenues by \$3.37 million in fiscal year 2001-02 and \$3.82 million in fiscal year 2002-03.
  - Withholding Taxes. It accelerates the payment of withholding taxes by changing the threshold for monthly payments from \$500 to \$250. This change became effective January 1, 2002, and applies to payments of withheld income taxes made on or after that date. This change generated a one-time increase in General Fund revenues for fiscal year 2001-02 of \$57.12 million. The change will also increase General Fund revenues by \$.88 million in fiscal year 2001-02 and by \$1.85 million for fiscal year 2002-2003.
  - Semi-Monthly Sales Tax Payments. It increases the number of taxpayers required to submit semi-monthly sales tax payments and it accelerates the payment schedules for the sales tax on telecommunications and electricity and for the excise tax on piped natural gas. The one-time gain in General Fund revenues from these accelerated payments is \$39.52 million for fiscal year 2001-02. The recurring General Fund increase from these changes is \$2.93 million for fiscal year 2001-02 and \$4.17 million for fiscal year 2002-03.
  - Acquisition of School Property. It adds Bertie, Chatham, Clay, Rutherford, Transylvania, and Yadkin Counties to the list of counties authorized to acquire school property on behalf of their boards of education. S.L. 2001-76 granted this authority to Anson, Craven, McDowell, Montgomery, and Pamlico Counties. Eighty-one counties currently have this authority. This section became effective September 1, 2001.
  - Agency Fee Increases. It provides that an agency may not establish or increase a fee or charge unless one of the following conditions has been met, effective September 1, 2001:
    - The General Assembly has set the fee or charge amount and the purpose of that fee or charge by statute.
    - The General Assembly has given the agency general authority to establish or increase a fee or charge by statute and the agency has consulted with the Joint Legislative Commission on Governmental Operations before establishing or increasing that fee or charge.
  - Motor Fuels Tax/Community Colleges. It exempts community colleges from paying the motor fuels tax, effective January 1, 2002. Allowing community colleges to buy non-tax paid fuel directly from suppliers will decrease revenues in the Highway Fund and Highway Trust Fund by approximately \$50,000 a year.
  - Foreign Source Dividends. It clarifies that foreign source dividends are treated the same for State income tax purposes as domestic source dividends. This provision became effective for taxable years beginning on or after January 1, 2001. There is no fiscal impact.

- Department of Labor Fees. It authorizes the Commissioner of Labor to establish elevator and amusement device inspection fees. This fee-setting ability will put the Department of Labor in a position to make its Elevator and Amusement Device Division fee-supported. This change in the law became effective September 28, 2001. The fees proposed by the Commissioner of Labor will yield an additional \$1.6 million in fiscal year 2002-03.
- Franchise Tax Clarification. It makes a technical and clarifying change to the franchise tax statute. This section became effective September 28, 2001.
- Distribution of Local Sales & Use Tax. It accelerates the distribution of local sales and use tax revenue to local governments. The local sales and use tax is collected by the State and distributed to the counties and municipalities quarterly. This provision provides that the distribution must be made monthly, effective July 1, 2003. The State's loss of interest on these funds will be \$9.6 million in fiscal year 2003-04.
- Excise Tax on Conveyances. It accelerates payment of the revenue generated by the State excise tax on conveyances to the State. The tax must be paid to the county register of deeds before an instrument may be recorded. This provision requires that the portion of the tax revenue due to the State must be remitted monthly, as opposed to quarterly. This section becomes effective July 1, 2003, and applies to amounts collected on or after that date. No fiscal estimate is possible.
- Prisons on State-Owned Lands. It exempts prisons located on land owned by the State and built pursuant to a contract with the State from property tax. This includes construction in progress and any leasehold interest in the land owned by the State upon which the correctional facility is located. S.L. 2001-84 (SB 25), effective May 17, 2001, authorized the Department of Administration and Department of Correction (DOC) to award a contract for the construction of up to three new close custody prisons. S.L. 2001-424 (SB 1005) and S.L. 2001-322 (SB 34) authorized construction of three prisons after acceptance by the Council of State. The Request for Proposal issued by DOC indicated that the State would be responsible for the property tax, rather than the vendor. S.L. 2001-84 exempts the State from paying property tax during the period the State is leasing the prisons from the Special Non-Profit Corporation. This act exempts the State from paying property tax during the period of construction. DOC indicates that construction began in November 2001 for two prisons and will begin on the third prison in winter, 2002. Completion dates for all three prisons are expected to be in fiscal year 2003-04. The sites for the three prisons are Alexander, Scotland and Anson Counties. This part of the act became effective for taxable years beginning on or after July 1, 2001. It saves the State approximately \$700,000 in fiscal year 2001-02 and \$1,680,000 in fiscal year 2002-03. (MW)

## Simplify Taxes on Telecommunications

S.L. 2001-430 (HB 571), as amended by S.L. 201-424 (SB 1005) and S.L. 2001-487 (HB 338), simplifies the collection of telecommunications taxes, by:

- Combining multiple tax rates into one uniform rate equal to 6%.
- Broadening the tax base by eliminating exemptions for interstate calls and telephone membership corporations.
- Taxing prepaid phone cards at the point of sale instead of at the point of use.
- Adjusting the tax on the gross receipts from pay phones.
- Setting a call center tax cap of \$50,000 a year.
- Replacing the 3.09% franchise tax distribution to municipalities with a distribution of 18.26% of the new revenue total (less the previous freeze amount).

The act is expected to generate \$34.4 million in fiscal year 2001-02 and \$87.9 million in fiscal year 2002-03. The act became effective January 1, 2002, and applies to taxable services reflected on bills dated on or after January 1, 2002. (MH)

## **Pass-Through Entity/Housing Tax Credit**

S.L. 2001-431 (SB 181) amends the low-income housing tax credit in two ways:

- It allows a pass-through entity to allocate the low-income housing credit to any of its owners at its discretion. In effect, it allows developers of low-income housing to sell federal and State low-income housing tax credits to separate investors. The credit amount may not exceed the owner's adjusted basis in the pass-through entity. If the credit is ever forfeited, the forfeiture applies to the owners in the same proportion as the credit was allocated.
- It expands the credit by allowing it to be taken against the gross premiums tax on insurance companies.

The fiscal impact of this act is not known because it is not known whether the changes to the credit allowed under this act will increase the use of the State tax credit. In calendar year 2000, only 70% of the low-income housing projects receiving the federal tax credit also requested the State tax credit. Under federal law, each state receives a tax credit of a specified per capita amount. The State's tax credit is a percentage of the federal tax credit. Therefore, there is a ceiling on the total amount of State tax credit that can be claimed.

The act is effective for taxable years beginning on or after January 1, 2001, and applies to buildings that are placed in service on or after January 1, 2001. (CA)

## **Counties Collect Delinquent Taxes Before Record Deeds**

S.L. 2001-464 (HB 108), as amended by S.L. 2001-513 (HB 231), authorizes the county commissioners in 35 different counties to require the register of deeds to refuse to register a deed unless the county tax collector has certified that no delinquent taxes are due on the property. The act provides these counties with a potential tool to assist them with the collection of delinquent property taxes.

The act became effective November 16, 2001; it applies to the following 25 counties: Alleghany, Anson, Beaufort, Cabarrus, Camden, Cherokee, Chowan, Currituck, Forsyth, Graham, Granville, Harnett, Haywood, Jackson, Lee, Madison, Montgomery, Pasquotank, Perquimans, Pitt, Stanley, Swain, Vance, Warren, and Yadkin Counties. S.L. 2001-513 became effective January 4, 2002; it applies to Carteret, Cleveland, Davidson, Gaston, Iredell, Martin, Person, Rockingham, Rowan, and Washington Counties. (CA)

## **Grape Growers Council Fund**

S.L. 2001-475 (SB 970) expands the quarterly distribution of a portion of the excise tax on wine to the North Carolina Grape Growers Council, effective October 1, 2001, and applicable to distributions made on or after that date. Under prior law, 94% of the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and 95% of the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter was credited to the Department of Agriculture. The amount credited could not exceed \$175,000 per fiscal year. This act changes the distribution amount to 100% of each tax on wine bottled in North Carolina, and raises from \$175,000 to \$350,000 the annual cap on the amount to be distributed.

The Department of Agriculture must continue to allocate these funds to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. If any of the earmarked funds are not expended during the fiscal year, they do not revert to the General Fund but remain available to the Grape Growers Council. The additional funds that will go to the Grape Growers Council as a result of this act would, under prior law, be divided between the State's General Fund and the counties and cities in which the sale of wine is authorized. (CA)

## Bill Lee Act Changes

S.L. 2001-476 (SB 748), as amended by S.L. 2001-487 (HB 338), makes numerous changes to the William S. Lee Quality Jobs and Business Expansion Act, modifies the sales tax rate that applies to electricity used by manufacturers, modifies definitions in the new sales tax holiday to conform to the streamline legislation, and extends the bidding law exemption for the Piedmont Triad Airport Authority.

Effective for taxable years beginning on or after January 1, 2001, the act expands the law to allow a taxpayer to qualify for credits if:

- It has an establishment whose primary activity is in computer services.
- It has an establishment whose primary activity is an electronic shopping and mail order house.
- It has an establishment whose primary activity is warehousing and is located in a tier 1, 2, or 3 county, serves at least 5 counties, and is located in a separate site.
- The primary business is manufacturing, warehousing or wholesale trade and the jobs, investment, or activity with respect to which a credit is claimed are used in any of those types of businesses.

### Effective Dates & Specific Provisions:

- Increase in Population Thresholds. Effective November 29, 2001, it increases the population thresholds used in determining county tier designations. It gives low population counties more favorable tier designations.
- Customer Service Centers/Electronic Mail Order Houses. Effective for taxable years beginning on or after January 1, 2001, it extends tax credits to customer service centers and electronic mail order houses located in tier 3 areas.
- Expiration of Credits. Effective November 29, 2001, it clarifies when credits expire under the Act.
- Wage Standards. Effective for taxable years beginning on or after January 1, 2002, it makes changes to the wage standard.
- Safety & Health Standards. Effective for taxable years beginning on or after January 1, 2000, it makes changes to the safety and health standards.
- Safety, Health & Environmental Standards. Effective for taxable years beginning on or after January 1, 2002, it makes conforming changes to the safety and health and environmental standards.
- R&D Carryforward. Effective for taxable years beginning on or after January 1, 2002, extends the carryforward for research and development credits from 5 years to 15 years.
- Timeframe for Claiming Credits. Effective for taxable years beginning on or after January 1, 2001, it shortens the period in which credits under the Bill Lee Act may be claimed.
- Certification of Applications/Fees & Reports. Effective for business activities that occur on or after January 1, 2002, and for activities occurring before that date for which no application has been filed by January 1, 2003, it eliminates the Department of Commerce's role in the certification of applications and changes in fees and reports. S.L. 2001-487 amended this provision.

- Machinery & Equipment. Effective for taxable years beginning on or after January 1, 2002, it clarifies the machinery and equipment threshold.
- Central Office & Aircraft Facility Property. Effective for taxable years beginning on or after January 1, 2001, it eliminates a claw-back provision regarding the credit for central office and aircraft facility property.
- Purchase or Lease of Real Property. Effective for taxable years beginning on or after January 1, 2002, it creates a new 30% tax credit for the purchase or lease of real property. The tax credit must be taken over 7 years and it has a 20-year carryforward. The taxpayer must invest at least \$10 million within 3 years and create 200 jobs within 2 years.
- FedEx Bidding Law Exemptions. Effective November 29, 2001, it extends the FedEx bidding law exemptions.
- Sale of Electricity to Manufacturers. Effective January 1, 2002, it reduces the sales tax on electricity sold to manufacturers from 2.83% to .17% for more than 900,000 megawatts. S.L. 2001-487 amends this provision to provide further reductions effective July 1, 2005: 2.25% for over 5,000 and up to 250,000 megawatts; 2% for over 250,000 and up to 900,000 megawatts.
- Sales Tax Holiday Provisions. Effective January 1, 2002, it amends the sales tax holiday provisions in S.L. 2001-424 to provide a sales tax exemption for sport or recreational equipment with a sales price of \$50 or less per item and to provide that the exemption does not apply to clothing accessories, equipment, or protective equipment. The act also deletes footwear from the list of items eligible for the sales tax holiday.
- Historic Rehabilitation Credits. Effective November 29, 2001, it extends the special allocation rules for pass-through entities for the historic rehabilitation credit for two additional years.

The act has a minimal fiscal impact for this biennium. (CH)

## Technical Correction Act

S.L. 2001-487 (HB 338) makes technical corrections, conforming and other changes to various statutes and session laws. This summary covers those sections of the act that contain changes related to finance matters.

- It amends G.S. 105-164.44F to provide for a tax distribution to cities served by a telephone membership corporation. This section became effective January 1, 2002.
- It provides that no highway use tax applies when a motor vehicle title is reissued to remove one or more co-owner's names as long as there is no consideration for the transfer. This change became effective December 16, 2001.
- It exempts from sales tax telecommunications charges that would otherwise be inadvertently subjected to tax under S.L. 2001-430, Simplify Taxes on Telecommunications, due to a change in definitions. These charges are paid by State agencies and local governments and are not taxed. These changes became effective January 1, 2002.
- It amends a provision passed in the Current Operations and Appropriations Act of 2001 in order to clarify that the Utilities Commission has some flexibility in lowering rates, rather than being limited to lowering only basic local line rates by the exact amount of the reduced tax burden. This change related to the telecommunications changes enacted in S.L. 2001-430. This section became effective December 16, 2001.
- It reduces the megawatt-hour volume threshold for determining tax rates for electricity received by industries or plants. It also amends the effective date for the electricity provisions of S.L. 2001-476, Bill Lee Act Changes. This section becomes effective December 16, 2001, and applies to sales made on or after January 1, 2002. This part of the act reduces General Fund revenues for fiscal year 2001-02 by \$322,000.

- It eliminates the Department of Commerce's role in certifying applications for credits as soon as possible, but to still maintain a mechanism for the collection of fees paid in connection with the credits until the Department of Revenue can take over. This section became effective December 16, 2001. (CA)

## Vehicle Transition/HMOs/Prepared Food

S.L. 2001-489 (HB 748) contains the three provisions listed below:

- It provides that the repeal of the \$1,500 highway use tax cap effective October 1, 2001, does not apply to vehicle titles issued pursuant to a sale or a contract entered into or awarded before October 1, 2001. This part of the act became effective December 19, 2001.
- It delays by one year the premiums tax equalization for HMOs and Medical Service Corporations, and makes up the revenue by one-time estimated payments and a slightly higher rate in 2003. This part of the act became effective December 19, 2001. No fiscal impact is expected in FY 2001-02 as a result of this change. The specifics of the new plan were designed in such a way that the new revenue produced for 2002-03 would be equal to the amount captured for that year under S.L. 2001-424. Thus this section is revenue neutral for 2002-03 with regard to the provisions adopted in that act. For future years it is difficult to determine the exact impact of either the prior change or the new provisions due to the uncertainty in the health insurance marketplace. For 2003-04 there might be a revenue loss (compared to S.L. 2001-424) due to the acceleration of estimated tax payments into 2002-03 to ensure revenue neutrality for that year.
- It clarifies that prepared food is taxed the same under the Streamlined Sales and Use Tax Agreement, enacted earlier this session as S.L. 2001-347, as it was taxed under previous law. It also deletes part of a definition that would have inadvertently exempted alcoholic beverages served in restaurants from local meals taxes. This part of the act became effective January 1, 2002, and applies to sales made on or after that date. Enactment of this change has no fiscal impact as it returns the definition to that anticipated in the original fiscal note for S.L. 2001-347. However, failure to enact this change would have resulted in a substantial revenue loss to the State by eliminating the State sales tax on all take-out, drive-thru, and delivery foodstuffs. Based on the 1997 Economic Census, Fiscal Research believes the minimum loss from not enacting this section of the act would have been \$30.26 million for fiscal year 2001-02 and \$62.84 million for fiscal year 2002-03. (CH)
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## Modify Vehicle Tax Refund & Tax Cap

S.L. 2001-497 (HB 72) does two things:

- It extends from 120 days to one year the time a taxpayer has to request a refund for property taxes paid on a motor vehicle for which the taxpayer has surrendered the vehicle's registration plate. This part became effective December 19, 2001.
- It places a maximum highway use tax of \$1,500 on recreational vehicles that do not qualify for the existing \$1,000 maximum tax. The effective date for the reapplication of the \$1,500 cap is retroactive to October 1, 2001. Based on sales data from the years 2000 and 2001 from 3 high volume RV dealerships, the total revenue gained from removing the \$1,500 highway use tax cap on recreational vehicles is \$842,811 in a full year. Passage of this act for the nine months in FY 2001-02 will result in the loss of \$632,000 to the Highway Trust Fund. The loss occurs because the anticipated gain from removing the cap in S.L. 2001-424 was transferred to the General Fund. While the cap was restored for recreational vehicles in this act, the General Fund transfer has not been reduced. The revenue loss in fiscal year 2002-03 is anticipated to be \$908,550. (CH)

## Amend Use Value Statutes

S.L. 2001-499 (HB 1427) makes two changes to the present-use value statutes and it authorizes a Property Tax Study Commission:

- It provides that the owner of land classified as agricultural land, horticultural land, or forestland can transfer the property, regardless of whether the new owner already has property in the classification, without losing the property's use value tax status.
- It allows the owner of land classified as agricultural land, horticultural land, or forestland to prepay any deferred taxes that are a lien on the property.

The act became effective January 1, 2002. (MW)

## Certain Manufactured Homes Real Property

S.L. 2001-506 (HB 253) makes the following changes to the laws regarding the classification of a manufactured home as real property:

- Amends the definition of "real property" in the property tax laws by removing the requirement that a manufactured home must have multiple sections to be considered real property.
- Codifies the current policy of the Division of Motor Vehicles (DMV) requiring an owner of a manufactured home to submit an affidavit and surrender the certificate of title to DMV when the manufactured home becomes real property under the property tax laws.
- Requires the owner of real property who has surrendered the certificate of title to a manufactured home on the real property and submitted an affidavit to DMV to then file the returned affidavit in the office of the register of deeds where the property is located.
- Allows the owner of real property on which an untitled manufactured home has been or will be placed to file a declaration of intent to place a manufactured home on the real property and to convey or encumber the real property, including the manufactured home.

The change to the definition of "real property" in the property tax laws is effective for taxes imposed for taxable years beginning on or after July 1, 2002. The remainder of the act became effective January 1, 2002, and applies to manufactured home title cancellations and to declarations of intent, deeds, deeds of trust, and other instruments recorded after that date. (MW)

## Corporate Asset Transfers

S.L. 2001-508 (HB 168) makes the tax law changes listed below:

- It permits the board of directors of a corporation to transfer corporate assets to a wholly owned limited liability company, limited partnership, registered limited liability partnership, or other unincorporated entity without the approval of the shareholders. Under certain circumstances, there could be tax advantages to transferring corporate assets to an unincorporated entity. However, many of these potential tax advantages were removed with the enactment of S.L. 2001-327. As a result, the North Carolina Department of Revenue does not believe passage of this legislation, in and of itself, will substantially affect State revenue. While there is a potential for a fiscal loss as an indirect consequence of the act, that impact is expected to be minimal.
- It supports troops participating in Operations Enduring Freedom and Noble Eagle by authorizing the Governor to waive deadlines, fees, and penalties; extending applicable deadlines for paying property taxes and listing property for taxation; and allowing community college and UNC system refunds and waiver of legislative tuition grants to deployed students who are unable to complete the semester.



The act became effective December 19, 2001. (CA)

## **No Tax on Newspapers Sold in Vending Machines**

S.L. 2001-509 (SB 400) exempts all sales of newspapers sold through vending machines from sales and use tax. Data is not available to estimate the fiscal impact of this act. However, it is expected the impact of this act will be relatively small given the limited number of papers sold through stand alone machines and the fact that all vending machine sales that were primarily taxable were subject to only 50% of the tax rate.

The act became effective January 1, 2002. (CA)

## **Tax Revenue for Turfgrass Research**

S.L. 2001-514 (HB 688) does three things:

- It imposes a 6.5% State and local sales tax on fertilizers and seed sold to consumers other than farmers, effective February 1, 2002. This provision is expected to generate \$2.3 million in fiscal year 2001-02 and \$6.3 million in fiscal year 2002-03.
- It appropriates \$700,000 from the General Fund for each year in the 2001-03 biennium budget for turfgrass research and education.
- It credits \$750,000 from the General Fund to the Savings Reserve Account in fiscal year 2001-02. (CA)

## **Extend Sunset on State Ports Tax Credit**

S.L. 2001-517 (HB 1388) extends the sunset on the credit for North Carolina State Ports Authority wharfage, handling, and throughput charges to January 1, 2003. The act is expected to reduce General Fund revenues \$657,000 annually.

The act became effective for taxable years beginning on or after March 2, 2000. The act is effective retroactive to March 2, 2000, so that the availability of the credit remains uninterrupted. (CH)

## **Major Pending Legislation**

### **Government Sales Tax Exemption**

HB 111 exempts certain government purchases from State and local sales tax and allows a sales tax refund to community colleges. Specifically, the bill exempts "local government units" from sales tax. The bill defines "local government unit" as a local school administrative unit, a community college, a county and a city. However, the exemption does not apply to receipts from the sale of electricity, local telecommunications services, toll telecommunications services, or private telecommunications services.

To obtain the exemption, the items must be purchases by check, credit card, procurement card or credit account of the local government unit, and the purchase must be pursuant to a signed purchase order containing the local government exemption number and include a description of the property purchases. (MS)

## **Public Construction Law Changes/Energy Efficiency in State Buildings**

Part III of HB 623 authorizes State agencies, boards, and commissions to enter into contracts for up to 12 years to finance certain capital improvements.

### **No Sales Tax on Free Publication**

HB 975 exempts from the sales and use tax the sales of paper, ink, and other tangible personal property to commercial printers and publishers for use in free circulation publications. The bill also exempts the sales by printers of the free circulation publications to the publishers.

Specifically, HB 975 reinstates the sales tax exemption on the supplies sold for free circulation publications but does not base the exemption on the content of the publication. Instead, a free circulation publication would be defined as a publication that meets the following conditions:

- Is published on a periodic basis at recurring intervals.
- Is mailed or is distributed house-to-house by street distributors, in racks, or in any other manner at other locations without charge to the recipient. (MS)

### **State Government Sales Tax Exemption**

HB 975 would allow a sales tax exemption for State agencies. Under current law, State agencies receive a refund of sales and use tax. House Bill 975 provides that those agencies would instead receive a refund provided that the items are purchased by a State agency, the items are purchased with a check, credit card, procurement card, or credit account of the agency, and purchased pursuant to a purchase order signed by an authorized person. (MS)

### **Small Business Contractor Initiative/Funds**

SB 832 creates the North Carolina Small Business Contractor Authority in the Department of Commerce to provide loan guarantees, loans, and surety bonds for financially responsible small North Carolina businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The bill also establishes an 11-member authority to administer two nonreverting special revenue funds consisting of State appropriations, loan repayments, fee receipts, proceeds from the disposition of property held by the authority, investment income, and other funds.

## **Studies**

### **New Independent Studies/Commissions**

#### **Property Tax Study Commission**

S.L. 2001-499 (HB 1427) establishes the Property Tax Study Commission (Commission) to study, examine, and recommend changes concerning the property tax system. The Commission consists of 16 members. Eight of the members are appointed by the President Pro Tempore of the Senate, four of whom are Senators and four of whom are public members. Eight of the members are appointed by the Speaker of the House, four of whom are House members and four of whom are public members.

The Commission is charged with examining all classes of property, including the taxability of nonprofit charitable hospitals, as well as other exemptions and exclusions of property from the property tax base. The Commission will also be responsible for studying the present-use value system.

The Commission may submit an interim report to the 2002 Regular Session of the General Assembly and is required to submit its final report, including findings and recommendations, to the 2003 General Assembly.

The act was effective December 19, 2001. (MS)

## **North Carolina Tax Policy Commission**

S.L. 2001-491, Part XXIX (SB 166, Part XXIX) reestablishes the North Carolina Property Tax Study Commission originally established by S.L. 1999-395. The Commission may make an interim report to the 2002 Regular Session of the General Assembly and is required to submit a final report by March 1, 2003 to the General Assembly, the Governor, and the citizens of the State.

The act was effective December 19, 2001. (MS)

## **Referrals to Existing Commissions/Committees**

### **Electric Power Company Reporting Requirements**

S.L. 2001-427, Sec. 6(h) (HB 232, Sec. 6(h)) provides that the Revenue Laws Study Committee (Committee) may study reporting requirements for electric power companies and the method by which the franchise tax on these companies is distributed to cities. The Committee may also ask the League of Municipalities for its recommendations. The Committee may report its findings to the 2002 Regular Session of the General Assembly.

This section became effective January 1, 2002. (MS)

### **Tax Rate Structure Relating to the Sales of Electricity to Manufacturers**

S.L. 2001-476, Sec. 15(a) (SB 748, Sec. 15(a)) directs the Revenue Laws Study Committee (Committee) to study the tax rate structure relating to the sales of electricity to manufacturers. The study must include a thorough review of the legal and fiscal effects of exempting all piped natural gas received by a manufacturer from the piped natural gas excise tax, and of exempting piped natural gas that is used by a manufacturer in certain processes or furnaces from the piped natural gas excise tax. The Committee must make an interim report to the 2002 Regular Session of the General Assembly and must make a final report to the 2003 Session of the General Assembly.

This section became effective November 29, 2001. (MS)

### **Various Studies**

S.L. 2001-491, Part IX (SB 166, Part IX) provides that the Revenue Laws Study Committee (Committee) may study the following topics and report its findings to either the 2002 Regular Session of the General Assembly or the 2003 Session of the General Assembly:

- Compliance with Tax Laws. The Committee may study proposals for improving compliance with State tax laws, including an evaluation of how existing data may be used to identify

businesses that under-report income or sales, retailers that misuse certificates of resale, and taxpayers that use other methods to avoid complying with tax laws.

- Travel & Tourism Capital Incentive Grants. The Committee may study whether a travel and tourism capital incentive grant program should be established.
- Credit Card Solicitation. The Committee may study the issue of credit card solicitation.
- Apportionment Formula. The Committee may study the formula used to apportion the income of multistate corporations to this State, including the elimination of the double-weighted sales factor.

## Chapter 21

### Transportation

Brenda Carter (BC), Giles Perry (GSP),  
Wendy Graf Ray (WGR) and others  
(See references by initials on  
page 269 of this publication.)

## Enacted Legislation

### Department of Transportation

#### Transportation Planning

S.L. 2001-168 (SB 731) modifies and updates the process by which coordinated municipal street plans are developed. Prior law required each municipality, with cooperation from the North Carolina Department of Transportation (NCDOT), to develop a comprehensive street system plan for the area in and around the municipality. This act changes the current municipal coordinated street system planning process to:

- Change the designation of the plan from a "street system" plan to a "transportation" plan.
- Require consideration of all transportation modes in the plan.
- Require that cities located within a Metropolitan Planning Organization (MPO) develop their comprehensive street plan through the MPO.
- Authorize NCDOT to participate in the development of the transportation plan only if all local governments in the area affected by the plan have adopted or are in the process of developing a land development plan.
- Require opportunity for public comments in the development of the plan.
- Authorize counties to develop comprehensive transportation plans using the same procedures applicable to the development of the municipal transportation plans.
- Authorize municipalities and MPOs to develop collector street plans and authorize DOT to review and comment, but not approve, collector street plans.
- Require approval of any change to a plan for cities located within an MPO to be adopted by both the Department of Transportation and the MPO.

The act became effective June 7, 2001, and applies to plans adopted on or after that date.

(GSP)

#### American Ex-Prisoners of War Highway

S.L. 2001-196 (HB 114) redesignates U.S. Highway 70 in North Carolina as the "Blue Star Memorial and American Ex-Prisoners of War Highway." Under prior law, U.S. 70 was designated as the "Blue Star Memorial Highway" in tribute to North Carolinians killed during World War II. This act adds the designation "American Ex-Prisoners of War" to pay tribute to all North Carolina's ex-prisoners of war. The act directs the Department of Transportation, with the assistance of the Division of Veterans Affairs, to design and place appropriate signage along U.S. 70 in North Carolina to implement the act.

The act became effective June 13, 2001. (GSP)

## **Tourist Directional Sign Program**

S.L. 2001-383 (SB 206) creates the Tourist-Oriented Directional Sign Program (TODS). TODS are guide signs that display the business identification and directional information for tourist-oriented businesses and facilities. The Department of Transportation (DOT) is required to administer the program and to adopt rules for its implementation. Under the rules to be adopted, DOT must limit the placement of TODS to highways other than fully controlled access highways and to rural areas in and around towns and cities with a population of less than 40,000.

The act provides that a business is eligible to participate in the TODS Program if it is open to the public and does not restrict access to its facilities by the general public, if it complies with applicable laws regarding public accommodations, and if it meets specified requirements regarding operating hours and licensing. When a business is not directly on a State highway, it is eligible to participate if it is located on a street that directly connects with a State road and it is located so that only one directional sign will lead the tourist to the business. A business may terminate its participation in the TODS Program at any time.

The act also provides that DOT shall set a fee to cover the initial costs of signs, sign maintenance, and administration of the program and to establish a standard for the size, color, and letter height of the TODS consistent with the National Manual of Uniform Traffic Control Devices for Streets and Highways.

The act became effective January 1, 2002. (WGR)

## **Design Build Construction Project**

S.L. 2001-424, Sec. 27.2 (SB 1005, Sec. 27.2) authorizes the Board of Transportation to award up to three contracts annually for construction of transportation projects on a design-build basis, and report on design-build projects to the Joint Legislative Commission of Governmental Operations and to the Joint Legislative Transportation Oversight Committee.

This section became effective July 1, 2001. (GSP)

## **Transfer of Governor's Highway Safety Program**

S.L. 2001-424, Sec. 27.11 (SB 1005, Sec. 27.11) transfers the Governor's Highway Safety Program to the Office of the Secretary of Transportation.

This section became effective July 1, 2001. (GSP)

## **DOT Regulation of Modular Homes**

S.L. 2001-424, Sec. 27.17 (SB 1005, Sec. 27.17) makes two changes to the law concerning modular homes. First, the section amends the house moving law (G.S. 20-356) to clarify that it does not apply to the movement of modular homes. Second, the section authorizes DOT to adopt temporary rules concerning the permitted height of mobile and modular homes.

The section became effective July 1, 2001, and authorization for temporary rule authority expires June 30, 2003. (GSP)

## **Asphalt Pavement Recycling**

S.L. 2001-424, Sec. 27.18 (SB 1005, Sec. 27.18) directs the Department of Transportation, as part of its resurfacing programs, to recycle pavement surfaces where feasible.

This section became effective July 1, 2001. (GSP)

## **Contract Agent Rate Increase**

S.L. 2001-424, Sec. 27.21 (SB 1005, Sec. 27.21) increases the per transaction compensation rate paid to commission contract agents for the issuance of license plates, certificates and titles. The rate for collection of the highway use tax is increased from \$1.20 to \$1.27. The rate for other transactions is increased from \$1.35 to \$1.43.

This section became effective July 1, 2001. (GSP)

## **Issuance of Temporary Rules Governing Minimum Criteria Transportation Projects**

S.L. 2001-424, Sec. 27.22 (SB 1005, Sec. 27.22) authorizes the Secretary of Transportation to adopt temporary rules to establish a class of minimum criteria projects for which the preparation of environmental documents is not required under the North Carolina Environmental Policy Act.

This section became effective July 1, 2001, and expires June 30, 2003. (GSP)

## **Department of Transportation Productivity Pilot Programs**

S.L. 2001-424, Sec. 27.22A (SB 1005, Sec. 27.22A) authorizes the Department of Transportation to establish two pilot programs to test incentive pay for employees as a means for increasing efficiency and productivity.

This section became effective July 1, 2001. (GSP)

## **Department of Transportation Cash Flow Management**

S.L. 2001-424, Sec. 27.23 (SB 1005, Sec. 27.23) makes several changes affecting the management of the cash balances of the Highway Fund and the Highway Trust Fund. The section directs the Department of Transportation to reorganize its cash flow management procedures; authorizes the State Treasurer to combine the balances of the two funds for cash flow management purposes; directs the Department to evaluate the need for short term borrowing to more efficiently manage cash flow; and authorizes the Department of Transportation to use \$680 million of the cash balances of the Highway Trust Fund for primary route pavement preservation, preliminary engineering, computerized traffic signal systems, and public transportation. In addition, the section authorizes the Department to transfer Highway Trust Fund funds allocated to a specific project to other Trust Fund projects, subject to the equity formula for distribution of funds.

This section became effective July 1, 2001. (GSP)

## **DOT Evaluate the Locations of Proposed Public And Private Schools to Enhance Traffic Operations and Safety**

S.L. 2001-424, Sec. 27.27 (SB 1005, Sec. 27.27) requires all public and private entities planning to build a new school to request, and the Department of Transportation to provide, written recommendations for and evaluation of driveway access and traffic operational and safety impacts on the State highway system resulting from a proposed school.

This section became effective July 1, 2001. (GSP)

## **Public Right of Way Declared**

S.L. 2001-501 (SB 1038). See **Property, Trusts and Estates**.

## **DMV Advertising**

S.L. 2001-513, Sec. 31 (HB 231, Sec. 31) forbids the Commissioner of Motor Vehicles from contracting for the sale of advertising to be placed in official mailings or publications of the Division until authorized by the General Assembly.

This section became effective July 1, 2001. (GSP)

## **Drivers Licenses**

### **Grandparents as Supervising Drivers**

S.L. 2001-194 (HB 78) adds grandparent to the list of persons authorized to be the supervising driver of a person holding a Level 1 limited learner's permit or a Level 2 limited provisional license.

The act became effective June 13, 2001. (GSP)

### **DMV/Proof of Residency/Social Security #/Taxpayer ID #**

S.L. 2001-424, Sec. 27.10 (SB 1005, Sec. 27.10) changes the drivers license application law to requires that a person applying for a drivers license must provide at least one form of written identification that indicates the applicant is a resident of North Carolina. The section also authorizes an applicant to complete a sworn affidavit indicating the applicant's address, if the applicant cannot provide acceptable written proof of residency. In addition, the section clarifies that an applicant must also provide a valid social security number, and if the applicant does not have a social security number, a valid taxpayer identification number issued by the Internal Revenue Service.

This section became effective January 1, 2002. (GSP)

### **Graduated Drivers License Change**

S.L. 2001-487, Sec. 51.5 (HB 338, Sec. 51.5) amends the graduated drivers license law to authorize a person under age 18 licensed in another state to receive a full provisional license (Level 3) in North Carolina if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held both a learner's permit and a restricted license from another state for at least six months each, the Commissioner finds that the requirements for the learner's permit and the restricted license are comparable to the requirements for a learner's permit and restricted license in this State, and the person has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a moving violation or a seat belt infraction in this State.

This section becomes effective May 1, 2002. (GSP)



## **DMV Issue License of Limited Duration**

S.L. 2001-513, Sec. 32 (HB 231, Sec. 32) amends the drivers license law to authorize the Division of Motor Vehicles to issue a drivers license for a duration shorter than the usual time period if the Division determines that the applicant for a license holds a visa of limited duration from the United States Department of State.

This section became effective December 6, 2001. (GSP)

## **License Plates**

### **Private License Plates on Publicly Owned Motor Vehicles**

S.L. 2001-424, Sec. 6.14 (SB 1005, Sec. 6.14). See **State Government**.

### **Retired Magistrates/Combat Infantry Badge Recipient Special Plates**

S.L. 2001-483 (HB 1389) authorizes the Division of Motor Vehicles to issue Combat Infantry Badge recipient special plates, upon receipt of 300 applications, and retired magistrate special plates. The fee for these special plates is the regular registration fee plus an additional fee of \$10.

The act became effective December 6, 2001. (GSP)

### **Various New Special Plates**

S.L. 2001-498 (HB 110) requires the Division of Motor Vehicles to notify the United States Department of State of any traffic conviction, other than parking, or license revocation order applicable to any person holding a United States Department of State Drivers License within 15 days after receipt.

The act also authorizes the Division of Motor Vehicles to issue the following new license plates, upon receipt of 300 applications for the respective plate, and payment of the regular registration fee and an additional fee, indicated in parentheses: Audubon North Carolina (\$20); First in Forestry (\$20); Military Veteran (\$10); Military Wartime Veteran (\$10); Save the Sea Turtles (\$20); Special Forces Association (\$20); U.S. Navy Specialty (\$10); The V Foundation for Cancer Research (\$25); Harley Owners' Group (\$20); and Rocky Mountain Elk Foundation (\$25).

The notification requirement becomes effective "at the earliest practical date, but no later than January 1, 2003." The sections of the act authorizing the various new special plates became effective December 19, 2001. The sections of the act authoring the Harley Owners' Group plate and the Rocky Mountain Elk Foundation plate expire June 30, 2006. (GSP)

## **Motor Vehicles**

### **Unlawful to Impede a School Bus**

S.L. 2001-26 (SB 45). See **Criminal Law and Procedure**.

## Transporter Plates to Counties

S.L. 2001-147 (SB 942) authorizes the Division of Motor Vehicles to issue one free transporter plate to each county for use to transport motor vehicles as part of a program established by the county to receive donated motor vehicles and make them available to low-income individuals.

This act became effective May 31, 2001. (GSP)

## UNC-Greensboro Parking Jurisdiction

S.L. 2001-170 (HB 752). See **Education**.

## Dealer Plate Changes

S.L. 2001-212 (SB 91) allows dealers engaged in the alteration and sale of specialty vehicles to apply for up to two dealer plates in addition to the number of dealer plates for which a dealer is otherwise entitled to apply. This act also defines "specialty vehicles" as vehicles required to be registered that are modified from their original construction for an educational, emergency services, or public safety use.

The act became effective June 15, 2001. (WGR)

## Notification of Leased Motor Vehicle Parking Violations

S.L. 2001-259 (HB 1342) changes the law governing rented vehicle parking violations. The act requires owners of rental vehicles who wish to avoid responsibility for a renter's parking ticket to furnish to the court within 30 days of receipt of notice of the violation evidence that the vehicle was rented. If the owner received the notification of the parking violation within 90 days of the parking violation, the act also requires the owner to provide the court the name and address of the renter.

The act became effective June 29, 2001. (GSP)

## Red Light Cameras/Certain Municipalities

S.L. 2001-286 (SB 243) adds the municipalities of Albemarle, Durham, Nags Head, Pineville, and the municipalities in Union County to G.S. 160A-300.1, the statute that authorizes the use of traffic control photographic systems (red light cameras) in the enforcement of traffic control laws. It also creates two new statutes, G.S. 160A-300.2 and G.S. 160A-300.3, that authorize the use of red light cameras in municipalities located primarily in Wake County and in the City of Concord respectively. The three statutes are outlined in the table below.

	G.S. 160A-300.1	G.S. 160A-300.2	G.S. 160A-300.3
Municipalities to which the Statute Applies	<i>Albemarle, Charlotte, Durham, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, Lumberton, Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, Pineville, and the municipalities in Union County.</i> (Added municipalities are in <i>italics</i> .)	The municipalities located primarily in Wake County.	The City of Concord.

	G.S. 160A-300.1	G.S. 160A-300.2	G.S. 160A-300.3
Compliance with DOT Requirements	Red light cameras and traffic signals must comply with DOT requirements.	Same as G.S. 160A-300.1.	Same as G.S. 160A-300.1.
Advance Warning Signs	Warning signs posted no more than 300 feet from the system must identify red light cameras.	Same as G.S. 160A-300.1.	Same as G.S. 160A-300.1.
Penalty for Violation	A violation of a traffic control law at an intersection where a red light camera is located is a noncriminal violation for which a \$50 civil penalty may be assessed, but for which no driver's license or insurance points may be assessed.	Same as G.S. 160A-300.1 if a violation is detected by a red light camera only. If a law enforcement officer and a red light camera detect a violation, the officer may charge the offender with an infraction, but if the officer does so, a civil penalty issued by the municipality is void and unenforceable.	Same as G.S. 160A-300.1.
Form of Citation	The citation must state the manner in which the violation may be challenged.	Same as G.S. 160A-300.1, except that the citation must also be attached to photographic evidence of the violation that identifies the vehicle involved.	Same as G.S. 160A-300.1.
Responsibility for Violation	The owner of the vehicle is responsible unless, within 21 days after receiving notice of the violation, the owner furnishes officials or agents of the municipality with (1) the name and address of the person or company who leased, rented, or otherwise had control of the vehicle or (2) an affidavit stating that the vehicle was stolen or in the custody of a person who did not have permission to use it.	Same as G.S. 160A-300.1, except that the owner of the vehicle must furnish information to the office of the mayor and may also avoid responsibility by furnishing a statement that the person who received the citation is not the owner or driver of the vehicle or was not driving a vehicle at the time and location designated by the citation.	Same as G.S. 160A-300.1.
Appeal	The municipality must institute a nonjudicial administrative hearing to review objections to citations and penalties.	The municipality must establish a nonjudicial administrative hearing process to review objections to citations and penalties. The municipality may establish an appeals panel of municipal employees to review objections, but if it does not, the mayor must review	Same as G.S. 160A-300.1.

	G.S. 160A-300.1	G.S. 160A-300.2	G.S. 160A-300.3
		and make a final decision on objections.	
Contract for Red Light Cameras	No Similar Provision.	A municipality may enter into only one contract for the lease, lease-purchase, or purchase of a red light camera system and the contract may be for no more than 60 months. After the period of the contract expires, the municipality must either own the system or return it.	No Similar Provision.
Proceeds from Citations	Municipalities retain proceeds from citations and use for a variety of purposes.	The clear proceeds from citations are paid to the county school fund. Clear proceeds are funds remaining after paying for the system, its operation, and administrative costs.	Same as G.S. 160A-300.2.

The act became effective July 13, 2001. (JH)

## Motor Vehicle Passing Laws/Dalton's Law

S.L. 2001-331 (HB 774) makes two changes to the motor vehicle law. First, the act sets out the method drivers shall use to pass an emergency vehicle parked within 12 feet of a roadway with its emergency lights illuminated.

Second, the act requires rental car companies to notify renters of the law requiring motorists to stop for and not pass stopped school buses. The act requires the notification to be made by a multi-language written notice, a multi-language placard, or a visual symbol placard. The act provides that there will be no civil or criminal liability in negligence or G.S 66-206 unfair trade practice action for failure of a rental car company to provide the notice.

The section of the act concerning passing of emergency vehicles became effective October 1, 2001. The section of the act concerning passing school buses became effective December 1, 2001. (GSP)

## Recreation Vehicles – Width/Length Changes

S.L. 2001-341 (HB 686) adds a definition of the term "recreation vehicle" to the motor vehicle law. As defined, the term includes "motor home," "travel trailer," "fifth-wheel trailer," "camping trailer", and "truck camper."

The act also increases the maximum allowed width of recreation vehicles from 102 inches to 102 inches plus six inches on the right side, and the maximum allowed length from 40 to 45 feet (excluding bumpers and mirrors).

The act became effective July 1, 2001. (GSP)

## Licensing Selling of Cars

S.L. 2001-345 (HB 432). See **Commercial Law**.

## Theft of Gasoline/License Suspension

S.L. 2001-352 (SB 278). See **Criminal Law and Procedure**.

## Low Speed Vehicles Defined/Lake Waccamaw Golf Carts

S.L. 2001-356 (HB 1052) defines and regulates low speed vehicles. Specifically, the act defines "low speed vehicle" in State law as a "four-wheeled vehicle whose top speed is greater than 20 mph but less than 25 mph". The act requires low speed vehicles to be registered and insured, specifies required equipment, and provides restrictions on the locations they may be operated. The act defines the terms "golf cart" and "utility vehicle", and forbids their registration and titling. The act also authorizes the Town of Lake Waccamaw to regulate the operation of golf carts on certain streets within the Town.

The act became effective August 1, 2001. (GSP)

## Clarify Public Vehicular Area

S.L. 2001-441 (SB 438) provides a mechanism whereby private property owners who desire to have their private streets or roadways treated as public vehicular areas, making them subject to State motor vehicle laws, may register the areas with the Department of Transportation (DOT) and erect signs identifying the areas as such.

This act also directs DOT to adopt rules for registration requirements and procedures and to charge a fee not to exceed \$500 per registration request. DOT must adopt rules governing the size and locations of signs, ensuring that they are placed so as to provide reasonable notice to motorists.

The act became effective December 1, 2001, and applies to offenses committed on or after that date. (WGR)

## Various Motor Vehicle Changes

S.L. 2001-487, Sec. 50 (HB 338, Sec. 50) makes several changes to the motor vehicle laws.

Section 50(a) changes the definition of "gross vehicle weight rating" from the value specified by the manufacturer as the *maximum loaded weight* of a vehicle to *the maximum loaded weight a vehicle is capable of safely hauling*. The bill also provides that when a vehicle is structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the gross vehicle weight rating of that vehicle will then be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles.

Section 50(b) rewrites the provision concerning copying or possessing a copy of a driver's license or learner's permit to allow black and white copies. The section also adds special identification cards to the coverage of this section.

Section 50(c) makes the requirement that a plate issued for a commercial vehicle must bear the word "commercial" applicable only to commercial vehicles weighing 26,001 pounds or more. The plate issued for commercial vehicles licensed for 7,000 pounds up to 26,000 pounds must bear the word "weighted".

Section 50(d) amends the State requirement that certain business vehicles be marked, by limiting its applicability to vehicles with a gross vehicle weight rating of more than 10,000 pounds *but less than 26,001 pounds*.

Section 50(e) clarifies an exception to the law regarding the weight of vehicles and load. Current law includes a weight and penalty exception for vehicles hauling aggregates from a distribution yard or a State-permitted production site within a North Carolina county contiguous to the North Carolina border to a destination *in an adjacent state*. This section of the bill amends the exception so that it applies to the described hauling to *another state adjacent to that county*. This section also requires that vehicles subject to this exception must be licensed in accordance with requirements for property hauling vehicles.

Section 50(f) amends the statute that authorizes law enforcement officers to weigh vehicles and require overloads to be removed. This section would specifically require vehicles with a GVRW of 10,001 pounds or more and vehicles transporting placardable amounts of hazardous materials enter a weigh station when directed by signs or electronic transponders.

Section 50(g) amends the statute that requires certain vehicles to stop at railroad grade crossings. This section makes three changes:--clarifies the existing requirement that vehicles transporting placardable amounts of hazardous materials must stop at RR crossings by adding an appropriate reference to federal law in G.S. 20-142.3(a) and deleting a reference in G.S. 20-142.3(d);--clarifies that G.S. 20-142.3, which requires certain vehicles stop at RR crossings, applies to vehicles subject to federal Motor Carrier Safety regulations by deleting G.S. 20-142.3(e); and--deletes a provision concerning marking of hazardous materials that conflicts with federal regulations (G.S. 20-142.3(c)).

These sections became effective December 16, 2001. (GSP)

## **Mobility Enhancement Device Definition**

S.L. 2001-487, Sec. 51 (HB 338, Sec. 51) amends the definition of the term "vehicle" in the motor vehicle laws. Under prior law, this term excluded certain mobility enhancement devices. This section amends that exclusion to specify that the definition of "vehicle" does not include devices used for mobility enhancement, including on sidewalks, if the device is limited by design to 15 miles per hour.

This section became effective December 16, 2001. (GSP)

## **MV Dealer Disclosure of Certain Fees**

S.L. 2001-492 (SB 649). See **Commercial Law**.

## **Salvage Changes**

S.L. 2001-492, Sec. 5 (SB 649, Sec. 5) as amended by S.L. 2001-487, Sec. 123.5 (HB 338, Sec. 123.5) directs the Division Motor Vehicles to issue or reissue an unbranded title for vehicles titled in this State between July 20, 2001, and November 1, 2001, pursuant to G.S. 20-71.3 if the vehicle was a motor vehicle damaged by collision or other occurrence and if the cost of repairs, including parts, did not exceed seventy-five percent (75%) of its fair market value.

This section became effective December 19, 2001. (GSP)

## **Air Quality/Motor Vehicle Inspection Fees**

S.L. 2001-504 (HB 969). See **Environment**.

## **Motor Vehicle Dealers and Manufacturers Licensing Law Amendments**

S.L. 2001-510 (SB 470). See Commercial Law

## **Public Transportation**

### **TTA Eminent Domain**

S.L. 2001-239 (SB 719) authorizes a regional transportation authority established under Article 26 of Chapter 160A of the General Statutes (the Triangle Transit Authority) to acquire property by "quick-take" condemnation. "Quick-take" condemnation means that title to the property condemned, and the right to immediate possession, occur upon the filing of the condemnation action.

The act became effective June 23, 2001. (GSP)

### **Regional Public Transportation Authority Capital Reserve Fund Accumulation**

S.L. 2001-424, Sec. 27.28 (SB 1005, Sec. 27.28) authorizes a regional public transportation authority (Triangle Transit Authority) to establish a capital reserve fund and use the funds for a noncapital purpose if the capital purpose for which the fund was created is no longer viable.

This section became effective July 1, 2001. (GSP)

## **Railroad**

### **Interstate High-Speed Rail Commission**

S.L. 2001-266 (SB 9) creates the Virginia-North Carolina High-Speed Rail Commission, subject to the concurring action of the Virginia General Assembly. The concurring Virginia legislation is Virginia Senate Joint Resolution 396 from the 2001 Session of the Virginia General Assembly. The Commission is directed to study the desirability and feasibility of establishing high-speed passenger rail service between Virginia and North Carolina and report its findings to the Governor and General Assembly by October 20, 2002.

The act became effective July 4, 2001.

S.L. 2001-486, Sec. 2.22 (SB 571, Sec. 2.22) expanded the North Carolina component of the Commission by two, to eight members, effective December 16, 2001. (GSP)

### **Western North Carolina Rail Operations and Right-of-Way Acquisition Funds**

S.L. 2001-424, Sec. 27.5 (SB 1005, Sec. 27.5) authorizes the Department of Transportation to use specified funds for an engineering study to determine the scope and cost of infrastructure improvements needed to provide passenger rail service to western North Carolina; authorizes the Department of Transportation to use specified funds to acquire right-of-way for a station in Asheville; directs the Department to negotiate with Norfolk Southern Corporation on use of tracts to provide the

service; and requires the Department to make a series of reports on this topic to the General Assembly.

This section became effective July 1, 2001 (GSP)

## Other

### County Road Names

S.L. 2001-145 (SB 380) authorizes counties to assign or reassign street numbers for use on roads within the county, not by ordinance, but through a procedure established by ordinance. A county is required to hold a public hearing before adopting such an ordinance, and at least ten days notice must be given, by publication in a newspaper of general circulation in the county, prior to the hearing.

This act also provides that names may be initially assigned to new roads by the recordation of an approved subdivision plat without following the statutory procedure.

The act became effective May 31, 2001. (WGR)

### Canadian Dealers/Salesmen Registration

S.L. 2001-225 (SB 275). See **Commercial Law**.

### Municipal ETJ Road Improvements

S.L. 2001-261 (SB 408). See **Local Government**.

### Child Bicycle Safety Act

S.L. 2001-268 (HB 63). See **Children and Families**.

### Clarify Auto Repair Bill of Rights

S.L. 2001-298 (HB 1067) makes changes to legislation enacted during the last biennium regulating the motor vehicle repair industry. The prior Motor Vehicle Repair Act, S.L. 1999-437, instituted requirements for providing written estimates for motor vehicle repairs, permitted a customer to authorize or cancel a repair, customer inspection of used parts, and provided an itemized invoice for repairs. This act makes the following changes:

- Under the original act, a motor vehicle repair shop did not have to follow the requirements of the act if an insurer authorized the repairs and agreed to pay the cost of the repair. This act amends the original act by providing that the requirements do not apply if a third party waives the right to an estimate and indicates that the repairs will be paid for by the third party, and the third party indicates that the customer's share of the cost will not exceed \$350.
- The original act provided for an implied partial waiver of the written estimate requirement when a customer leaves a motor vehicle at the shop when the shop is closed or if the customer permits the shop or another person to deliver the motor vehicle to the shop. The bill adds that there would be an implied partial waiver of the estimate when the repair shop reasonably believes that an accurate estimate of the cost of repairs cannot be made until after the diagnostic work has been completed.



- Upon cancellation of an order for repair and if the customer authorizes the repair shop to reassemble the motor vehicle, under the original act, the shop had to reassemble the motor vehicle, unless the reassembled vehicle would be unsafe. The bill provides that the shop must reassemble the motor vehicle regardless of whether or not it would be safe if reassembled.
- The original act entitled the customer to inspect removed parts, but was silent as to what a shop could do with the parts if the customer failed to take possession of the parts. The bill provides that a shop may discard or sell the parts and retain the proceeds if the customer fails to take possession of the parts within two business days after taking delivery of the repaired vehicle.
- The bill amends the original act concerning invoices by providing that a shop will not be required to provide an itemized invoice to the customer when a third party has indicated to the shop that the third party is paying for the repairs at no cost to the customer.

The act became effective July 21, 2001. (DJ)

## **Notify DWI Lienholders Immediately**

S.L. 2001-362 (HB 1217) changes the law governing the seizure and impoundment of motor vehicles for offenses involving impaired driving while a license is revoked.

The act:

- Decreases the amount of time the seizing officer has to notify DMV of the seizure from 72 hours to 24 hours;
- Clarifies that a notice of seizure received by DMV outside of regular business hours shall be considered to have been received at the start of the next business day;
- Requires DMV to notify lienholders of a seizure by fax within eight hours, if the lienholder has provided DMV with a designated fax number;
- Authorizes the clerk of court to make a determination concerning pretrial release of a seized vehicle to an innocent owner, without prior notice to the county board of education; and
- Requires any order releasing a seized vehicle to require payment of all towing and storage charges, and forbids waiver of this requirement.

The act became effective January 1, 2002. (GSP)

## **Accident Prevention Course Reduction**

S.L. 2001-423 (HB 164). See **Insurance**.

## **State Highway Patrol to Report to Legislative Oversight Committees on Budgetary Matters**

S.L. 2001-424, Sec. 27.25 (SB 1005, Sec. 27.25) directs the State Highway Patrol to report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on budget matters.

This section became effective July 1, 2001. (GSP)

## Major Pending Legislation

### **Toll Road and Bridge Authority**

HB 644 would create a public agency, to be called the "North Carolina Turnpike Authority," to construct, operate, and maintain toll roads and bridges in the State. At the end of the 2001 Legislative Session, this bill had passed second and third reading in the House and was in the Senate Finance Committee. (GSP)

## Studies

### **Legislative Research Commission**

#### **Nonbetterment Relocation Costs**

S.L. 2001-424, Sec. 27.26 (SB 1005, Sec. 27.26) authorizes the Legislative Research Commission to study the issue of nonbetterment utility relocation costs. No reporting date is specified in this section. (GSP)

#### **The 2001 Studies Bill**

S.L. 2001-491, Sec. 2.1(5) (SB 166, Sec. 2.1(5)) authorizes the Legislative Research Commission to study:

- (1) Steering and the offering of incentives with regard to motor vehicle glass repairs.
- (2) Post-towing procedures.
- (3) Use of cellular telephones in vehicles.
- (4) Compensation for Highway Patrol services.

The Commission may report its findings and recommendations to the 2002 Regular Session of the 2001 General Assembly, or to the 2003 General Assembly. (GSP)

#### **DMV Advertising**

S.L. 2001-513, Sec. 31 (HB 231, Sec. 31) authorizes the Legislative Research Commission to study the issue of sale of advertising to be placed in official mailings or publications of the Division of Motor Vehicles and report to the General Assembly "in 2002." (GSP)

## **New/Independent Studies/Commissions**

### **Highway Trust Fund Study Committee**

S.L. 2001-424, Sec. 27.6 (SB 1005, Sec. 27.6) creates the Highway Trust Fund Study Committee. The committee is directed to report to the Joint Legislative Transportation Oversight Committee by April 1, 2002. (GSP)

## **Referrals to Existing Commissions/Committees**

### **Joint Legislative Transportation Oversight Committee**

S.L. 2001-491, Part XIII (SB 166, Part XIII) authorizes the Joint Legislative Transportation Oversight Committee (JLTOC) to study:

- Commission contract agents.
- Improving compliance with vehicle registration requirements.
- Substandard subdivision roads.
- Transportation funding equity.
- Nonbetterment relocation costs.

The JLTOC may report its findings and recommendations to the 2002 Regular Session of the 2001 General Assembly or to the 2003 General Assembly. (GSP)

### **General Statutes Commission Study of Motor Vehicle Statutes**

S.L. 2001-491, Sec. 26.1 (SB 166, Sec. 26.1) authorizes the General Statutes Commission to study renumbering, rearranging, and consolidating the provisions of Chapter 20 of the General Statutes. The Commission may report its findings and recommendations to the 2003 General Assembly and to the 2005 General Assembly.

This section became effective December 19, 2001. (GSP)

### **Motor Vehicle Safety Inspection Program**

S.L. 2001-504 (HB 969) directs the Joint Legislative Transportation Oversight Committee to study the motor vehicle safety inspection program administered under Article 3A of Chapter 20 of the General Statutes. The Commission is authorized to present an interim report to the 2002 Regular Session of the 2001 General Assembly, and is directed to present a final report the 2003 General Assembly. (GSP)

## **Referrals to Departments, Agencies, Etc.**

### **Charlotte Downtown Intermodal Station Study**

S.L. 2001-424, Sec. 27.7 (SB 1005, Sec. 27.7) directs DOT to report to the Joint Legislative Transportation Oversight Committee on this topic by February 15, 2002. (GSP)

### **Drivers License/Motor Vehicle Registration Section Study**

S.L. 2001-424, Sec. 27.14 (SB 1005, Sec. 27.14) directs the Department of Transportation to study the consolidation of the function of the Driver License Section and the Motor Vehicle Registration Section of the Division of Motor Vehicles. The Department is directed to report to the Joint Legislative Transportation Oversight Committee by March 1, 2002. (GSP)

## **Aviation Division Study the Transfer of the Global TransPark Airport**

S.L. 2001-424, Sec. 27.19 (SB 1005, Sec. 27.19) directs the Department of Transportation Aviation Division to study the transfer of the Global TransPark airport from the Global TransPark Authority to another appropriate entity. The Department is directed to report the results of its study to the Joint Legislative Transportation Oversight Committee and to the Chairs of the Senate and House Appropriations Committees by February 15, 2002. (GSP)

## **State Board of Community Colleges to Study Transfer of Global TransPark Education and Training Center**

S.L. 2001-424, Sec. 27.20 (SB 1005, Sec. 27.20) directs the State Board of Community Colleges to study the transfer of the Education and Training Center from the Global TransPark Authority to an appropriate educational entity. The Board is directed to report the results of its study to the Joint Legislative Transportation Oversight Committee and to the Chairs of the Senate and House Appropriations Committees by February 15, 2002. (GSP)

## **DOT Study of Piedmont Area Commuter Rail Line**

S.L. 2001-491, Sec. 5.1 (SB 166, Sec. 5.1) directs the Department of Transportation Rail Division to study the feasibility of acquiring rail lines or usage rights on rail lines in Forsyth County, Guilford County, and neighboring counties for commuter rail service operated by the Piedmont Authority for Regional Transportation. The Department shall consult with the Authority in conducting its study. The Department shall report its findings and recommendations to the Joint Legislative Transportation Oversight Committee by May 1, 2002. (GSP)

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