SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION - 2002

SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

2001 GENERAL ASSEMBLY
2002 REGULAR SESSION
2002 EXTRA SESSION

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
DECEMBER 2002

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To the Members of the 2002 Session of the 2002 General Assembly:

This publication contains summaries of all substantive legislation of general applicability and certain local legislation having general import of the 2002 Regular Session and the 2002 Extra 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, Linda Attarian, Cindy Avrette, Brenda Carter, Drupti Chauhan, Erika Churchill, Karen Cochrane-Brown, Judy Collier, Tim Dodge, Frank Folger, Bill Gilkeson, George Givens, Wendy Graf Ray, Jeff Hudson, Shirley Iorio, Dianna Jessup, Robin Johnson, Sara Kamprath, Theresa Matula, Hal Pell, Giles Perry, Barbara Riley, Walker Reagan, Steve Rose, Mary Shuping, and Rick Zechini. Also contributing are Martha Harris and Canaan Huie of the Bill Drafting Division, and Martha Walston of the Fiscal Research Division. Susan Sitze is the chief editor of this year's summaries, and Trina Griffin is the co-editor. Amy Compeau 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 reference by initials on page 158 of this publication.)

Enacted Legislation

Close Robbins Diagnostic Laboratory

S.L. 2002-126, Sec. 11.1 (SB 1115, Sec. 11.1) provides for the closure of the Poultry Disease Diagnostic Laboratory located in Robbins, North Carolina. One veterinarian position and one medical laboratory technician position from the Poultry Disease Diagnostic Laboratory shall be reassigned to the Rollins Animal Disease Diagnostic Laboratory located in Raleigh in order to preserve current laboratory capability. Services provided at the Robbins Laboratory are to be provided at the Rollins Diagnostic Laboratory or other diagnostic laboratory designated by the Department of Agriculture and Consumer Services. The Department is to evaluate the statewide need for poultry disease diagnostic services and whether the needs of the region around Robbins are being met. The report shall be filed with the Joint Legislative Commission on Governmental Operations no later than March 15, 2003.

This section became effective July 1, 2002. (BR)

Adjust Method of Budgeting Receipts and Limit Spending

S.L. 2002-126, Sec. 11.2 (SB 1115, Sec. 11.2) directs the Office of State Budget and Management, in accordance with G.S. 143-25, to adjust its current method of budgeting receipt revenues with the Department of Agriculture and Consumer Services to more accurately reflect actual revenues. The Department shall not spend more in the 2002-2003 fiscal year than was appropriated under the budget act for the year.

This section became effective July 1, 2002. (BR)

Transfer Mountain State Fair Receipts

S.L. 2002-126, Sec. 11.3 (SB 1115, Sec. 11.3) transfers $70,000 from the Mountain State Fair receipts for fiscal year 2002-2003, to the Western North Carolina Development Association, Inc.

This section became effective July 1, 2002. (BR)

Farmland Preservation Funds

S.L. 2002-126, Sec. 11.6 (SB 1115, Sec. 11.6) directs the North Carolina Department of Agriculture and Consumer Services to use the funds appropriated for the Farmland Preservation Trust Fund for fiscal year 2002-2003 to be used for the purchase of agricultural conservation easements that are perpetual in duration and that may not be reconveyed under any circumstances.

This section became effective July 1, 2002. (BR)

Amend Use Value Statutes and other Tax Laws

S.L. 2002-184 (SB 1161). See **Taxation**.

Studies

Referrals to Departments, Agencies, Etc.

NC Farmers' Markets/Analyze Certain Operational Guidelines/Enforcement of Guidelines

S.L. 2002-126, Sec. 11.4 (SB 1115, Sec. 11.4) directs the North Carolina Department of Agriculture and Consumer Services to analyze the operational guidelines of the farmers' markets operated by the Department regarding current requirements governing the percentage of farm products sold by a farmer at market that must be grown by that farmer. The Department shall also study the current enforcement of existing guidelines. The Department shall report its findings to the Senate and House Appropriations Subcommittees on Natural and Economic Resources, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division no later than January 15, 2003.

This section became effective July 1, 2002. (BR)

Chapter 2
Alcoholic Beverage Control

Brenda Carter (BC), Susan Sitze (SS), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Vitaculture/Enology Course Authorization

S.L. 2002-102 (HB 190) authorizes the Alcoholic Beverage Control (ABC) Commission to grant a vitaculture/enology course authorization to a college or community college that offers the program as part of its curriculum offerings for students of the school. The holder of the authorization may manufacture wines from grapes grown by others until June 30, 2004, but after that date may manufacture wine only from grapes grown on the school's campus or leased property. The school may possess wines manufactured during the vitaculture/enology course program, and may sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit. However, the school may not receive shipments of wines from other producers. The act amends the law regarding unfortified winery permits to allow holders of the permits to receive, in closed containers, unfortified wine produced inside or outside the State under the winery's label from grapes owned by the winery. This provision previously included only wine produced outside the State. The sale of products raised or produced incident to the operation of a community college vitaculture/enology program is exempt from the Umstead Act, a law that generally prohibits the sale of merchandise or services by governmental units in competition with citizens of the State.

The act became effective August 29, 2002. (BC)

Amend Definition of Convention Center

S.L. 2002-188 (SB 70) amends the definition of a "convention center" in the State's ABC law to include privately owned facilities located in Greensboro. To qualify as a convention center, the facility must be located in a designated Urban Redevelopment Area and must be consistent with the city's redevelopment plan for the area in which the facility is located. The facility must contain at least 7,500 square feet of floor space that is available for public banquets, receptions, meetings, and other similar gatherings. Annual receipts from the sale of alcoholic beverages must be less than 50% of gross receipts paid for food, nonalcoholic beverages, service, and facility usage fees. As a convention center, a facility is eligible for the following permits when the issuance of the permit is lawful in the jurisdiction in which the facility is located: on-premises malt beverage, unfortified wine, fortified wine, special occasion and mixed beverages permits.

The act became effective October 31, 2002. (BC)

Chapter 3
Children And Families

Erika Churchill (EC), Dianna Jessup (DJ), Wendy Graf Ray (WGR), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Domestic Violence Commission Rulemaking

S.L. 2002-105 (HB 1534). See **State Government.**

Close Incest Loophole to Protect Minors

S.L. 2002-119 (HB 1276). See **Criminal Law and Procedure.**

Ruth Easterling Trust Fund for Children with Special Needs

S.L. 2002-126, Sec. 6.13 (SB 1115, Sec. 6.13) establishes a trust fund to provide services for children with special needs that are not currently provided for with State Funds. The Secretary of Health and Human Services is required to adopt rules to implement this section and report to the Chairs of the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Health and Human Services by March 1, 2003.

This section became effective July 1, 2002. (WGR)

Eliminate Additional Funds for Child Support Services

S.L. 2002-126, Sec. 10.35 (SB 1115, Sec. 10.35) eliminates the funds previously appropriated for the fiscal year 2002-2003 to the Department of Health and Human Services, Division of Social Services, for the purpose of contracting for additional child support services in urban counties with significant caseload backlogs.

This section became effective July 1, 2002. (EC)

Boys and Girls Clubs

S.L. 2002-126, Sec. 10.41A (SB 1115, Sec. 10.41A) provides that $550,000 of the funds appropriated to the Department of Health and Human Services for the Boys and Girls Club is to be placed in a grant program administered by the Department. Recipient programs are to improve motivation, performance and self-esteem of youths and to implement other initiatives expected to reduce school dropout and teen pregnancy rates.

This section became effective July 1, 2002. (EC)

Early Childhood Education and Development Initiatives Enhancements

S.L. 2002-126, Sec. 10.55 (SB 1115, Sec. 10.55) amends S.L. 2001-424, Sec. 21.75 by extending the provision regarding allocation of funds for Early Childhood Education and Development Initiatives for the 2002-2003 fiscal year. This section also directs the North Carolina Partnership for Children to develop guidelines for local partnerships to follow in selecting capital projects to fund.

This section became effective July 1, 2002. (WGR)

More at Four Program

S.L. 2002-126, Sec. 10.56 (SB 1115, Sec. 10.56) amends S.L. 2001-424, Sec. 21.76B, which created the "More at Four" prekindergarten task force. This section requires that the final report and recommendations for changes to the program be presented no later than January 1, 2003 and include the following:

- The number of children participating in the program.
- The number of children participating who have never been served in other early education programs.
- The expected expenditures for the fiscal year.
- The location of program sites and the number of children at each site.
- Recommendations regarding the most efficient and effective use of funds.
- A comprehensive cost analysis, including cost per child served.

This section became effective July 1, 2002. (WGR)

Child Care Subsidy Rates

S.L. 2002-126, Sec. 10.57 (SB 1115, Sec. 10.57) amends S.L. 2001-424, Sec. 21.73, regarding allocation of childcare subsidy rates. That section allowed application of the county market rate if it could be demonstrated that the application of the statewide or regional market rate to a county with fewer than 75 children in each age group was lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children. This section lowers the maximum number of children in each age group from 75 to 50 in order for this exception to apply.

This section became effective July 1, 2002. (WGR)

Repeal Child Care Fraud Provision

S.L. 2002-126, Sec. 10.58 (SB 1115, Sec. 10.58) repeals G.S. 110-108 in order to conform to federal requirements. Prior to the repeal, G.S. 110-108 allowed local purchasing agencies to retain, as incentive bonuses, money collected by the agency as a result of investigations of childcare fraud and overpayment claims. The bonuses were to be used for the purchase of subsidized childcare or to improve program integrity. This section eliminates that statutory provision in order to conform to federal requirements regarding cash management policies.

This section became effective July 1, 2002. (WGR)

Address Confidentiality Program

S.L. 2002-171 (HB 1402), as amended by S.L. 2002-159, Sec. 28.5 (SB 1217, Sec. 28.5), establishes the Address Confidentiality Program in the Office of the Attorney General to protect relocated victims of domestic violence, sexual offense, or stalking. Under this program, the Attorney General would designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of process and receiving and forwarding first-class mail or certified or registered mail, and State and local government agencies would use the designated address as the program participant's substitute address when creating new public records. The act is to be implemented using settlement funds from a nationwide antitrust lawsuit.

In order to participate in the program, an individual must submit an application to the Attorney General. The application must include evidence and a statement by the applicant that the applicant, or the person on behalf of whom the applicant is applying, is a victim of domestic violence, sexual offense, or stalking. It must also contain a statement as to whether there is any existing court order or court action involving the applicant related to divorce proceedings, child support, child custody, or child visitation, and a recommendation from an application assistant that the applicant should be certified to participate in the program. An applicant who knowingly provides false information shall lose certification in the program and be subject to a civil penalty of not more than $500.

Upon acceptance into the program, the Attorney General will certify the applicant as a program participant, designate a substitute address for the participant, and issue the participant a program authorization card. The participant may submit the card to State and local government agencies, and the agencies shall use the substitute address when creating new public records except under the following circumstances:

- An agency receives a waiver from the Attorney General.
- A board of elections shall use the actual address of a participant for election-related purposes and keep the address confidential from the public.
- The Attorney General shall issue to appropriate county, city, or town assessors or tax collectors the names and actual addresses of participants for the purpose of levying and collecting property taxes on motor vehicles.
- Registers of deeds shall use the actual addresses of participants for recorded instruments and for the purpose of indexing land transactions.
- A local school administrative unit shall use the actual address of a participant for any purpose related to admission or assignment.

The Attorney General shall cancel the participant's certification in the program under the following circumstances:

- The participant requests cancellation.
- The participant fails to properly notify the Attorney General of a change of name, address, or telephone number.
- The participant submitted false information in applying for certification.
- Mail forwarded to the participant is returned as undeliverable.

The Attorney General may only disclose the actual address or telephone number of a program participant under the following circumstances:

- The information is requested by a federal, State, or local law enforcement agency.
- The information is required by direction of a court order.
- Upon request of an agency to verify participation of a specific participant.
- Upon request of an agency that has received a waiver from the Attorney General.
- The participant is required to disclose the information as part of registration in a sex offender registration.
- If, at the time of application, a participant is subject to a court order or involved in a court action related to divorce, child support, child custody, or child visitation.

Any person who knowingly and intentionally obtains or discloses information in violation of the act is guilty of a Class 1 misdemeanor and will be assessed a fine of not more than $2,500.

The act becomes effective January 1, 2003. (DJ, WGR)

Studies

Legislative Research Commission

Studies Act of 2002

S.L. 2002-180, Sec. 2.1E (SB 98, Sec. 2.1E) authorizes the Legislative Research Commission to study ways to decrease homelessness. If the Commission undertakes the study, it shall consider the following:

- Identifying any needed in-State resources.
- Estimating the number of units required to house homeless individuals and families, and support systems necessary to help those who have been discharged from correctional, mental health, substance abuse services, foster care, TANF, and other institutions and systems.
- Identifying the number of units affordable to very low and extremely low-income households.
- Identifying obstacles to affordable housing development.
- The coordinated services necessary to plan to end homelessness among individuals and families.

This section became effective October 31, 2002. (WGR)

Chapter 4
Civil Law and Procedure

Brenda Carter (BC), Karen Cochrane-Brown (KCB), Bill Gilkeson (BG),
Wendy Graf Ray (WGR), Trina Griffin (TG), Robin Johnson (RJ), Hal Pell (HP),
Walker Reagan (WR), Steve Rose (SR), Susan Sitze (SS), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Judicial and Execution Sales Clarification

S.L. 2002-28 (HB 1513) amends the rolling upset bid provisions of the judicial sales statute and the execution sales statute to clarify that the authorization of the rolling upset procedure in these sales does not affect the necessity that the sales be confirmed by a judicial officer as is otherwise required under law. The language being deleted was derived from similar language in the foreclosure sales under a deed of trust statutes, but judicial orders confirming sales are not required in foreclosure sales.

The act became effective July 22, 2002. (WR)

Distribution to Unlocated Devisees

S.L. 2002-62 (HB 1538). See **Property, Trusts, and Estates.**

Rail Transportation Liability

S.L. 2002-78 (SB 759). See **Transportation.**

Electronic Register of Deed Filings

S.L. 2002-115, Secs. 1-4 (HB 1581, Secs. 1-4) authorize the Mecklenburg County and the Cabarrus County Registers of Deeds to record electronically plats and "electronic records" as defined in the Uniform Electronic Transactions Act (UETA). The fees for recording an electronic record will be based on the number of pages and formatting of the record if the Register of Deeds printed it. The purpose of this legislation is to initiate a pilot project whereby the Registers of Deeds in these counties may accept for recordation plats, cancellations, UCC filings, and assignments in an electronic format.

This act also authorizes a public agency to accept notarized documents electronically in transactions where a public agency is a party. It essentially permits a notary public to act electronically but does not eliminate any of the other requirements of notarial laws; it simply allows the signing and information to be accomplished in an electronic medium. The language of this provision is identical to a provision in UETA that also authorizes electronic notarization. Since this provision only applies to the Mecklenburg and Cabarrus Registers of Deeds, it has limited application. It does not apply to all electronic transactions involving a public agency, but only to those transactions where a public agency is a party and the document is filed with the Register of Deeds in either Mecklenburg or Cabarrus County.

These sections became effective on September 16, 2002. (TG)

Clarification of Court Fees

S.L. 2002-135 (HB 1187). See **Criminal Law and Procedure.**

Tobacco Escrow Compliance

S.L. 2002-145 (HB 348) seeks to improve the compliance of nonparticipating manufacturers of tobacco products with regard to making tobacco escrow payments by:

- Making it a Class A1 misdemeanor and an unfair trade practice for a distributor to sell cigarettes of a nonparticipating manufacturer if the brand family is not on the nonparticipating manufacturer's list. A defense to the crime is that the product was on the list when the distributor purchased it and the distributor sold the product within 60 days of purchasing it.
- Making it unlawful for a person to sell or deliver cigarettes belonging to a brand family of a nonparticipating manufacturer if the sale of the cigarettes is subject to cigarette taxes, unless the cigarettes are included on the compliant nonparticipating manufacturer's list as of the date of sale or delivery. A person who violates this provision may be subject to a civil penalty not exceeding the greater of 500% of the retail value of the cigarettes sold or $5,000.
- Requiring both participating manufacturers and nonparticipating manufacturers to submit a list to the Office of the Attorney General of all the manufacturer's brand families by April 30th of each year and to notify the Attorney General of any changes to the list of brand families offered for sale 30 days prior to the change.
- Requiring nonparticipating manufacturers to also comply with the following requirements:
  - To appoint and continuously maintain a process service agent in this State.
  - To make the escrow payments required by law.
  - To submit an escrow agreement to the Attorney General.
  - To not deliver cigarettes unless the cigarettes are included on the compliant nonparticipating manufacturer's list in effect on the date of delivery.
  - To certify in an annual application that all of the duties of this law have been fulfilled and that the list of the brand families offered for sale during the current calendar year or the previous calendar year is accurate.
- Requiring the Office of the Attorney General to prepare an annual list of the brand families of the participating manufacturers and a list of the nonparticipating manufacturers that are in compliance with the duties created under the act.

Background - In late 1998, 46 states and several U.S. territories reached an agreement to settle the lawsuits they had filed against the major cigarette manufacturers. The terms of the settlement were incorporated into an agreement known as the Master Settlement Agreement (MSA). The MSA contractually imposes restrictions on tobacco marketing and requires the tobacco companies to make annual payments to the states. One of the provisions of the MSA requires nonparticipating manufacturers to either participate in the MSA or, in the alternative, to create an escrow account to be funded by a statutorily determined amount per cigarette sold. In 1999, the General Assembly enacted statutory provisions to conform to the MSA. Under G.S. 66-291, a tobacco product manufacturer selling cigarettes to consumers within the State must either participate in the MSA or pay the specified amount into an escrow account.

The Department of Revenue and the Office of the Attorney General each have enforcement responsibilities. The Office of the Attorney General must keep a list of the nonparticipating manufacturers and the brand names of the products of those manufacturers. It may bring a civil action against a nonparticipating manufacturer that fails to place into escrow the statutorily required amount. The Secretary of Revenue must determine the amount of State tobacco excise taxes attributable to the products of nonparticipating manufacturer and it must

report this information to the Office of the Attorney General. The Office of the Attorney General has found that the number of non-compliant nonparticipating manufacturers, and their relative market share in North Carolina, has increased tenfold during 2001. For 2000, nonparticipating manufacturers represented less than 1% of North Carolina's cigarette market; this year it represents more than 10% of the market. For 2001, after months of enforcement action, over $2 million in escrow payments have not been collected for a couple of different reasons. First, many of the nonparticipating manufacturers are from countries, such as Columbia and China, where it is difficult to serve them with suits compelling compliance. The costs for service of the suit alone can be as much as $10,000 in some countries. Second, some of the brand owners change manufacturers each year to avoid paying the escrow payments. The existing statute has a built-in delay of 15 months before any action can be taken against a new manufacturer. That delay cannot be altered without threatening the continuation of settlement payments under the MSA.

The criminal and civil penalties enacted by the act become effective January 1, 2003. The remainder of the act became effective October 4, 2002. (CA)

Divisible Property in Equitable Distribution Actions

S.L. 2002-159, Sec. 33.5 (SB 1217, Sec. 33.5) amends the definition of "divisible property" with regard to actions for equitable distribution of property following a separation or divorce. Divisible property was defined by the General Assembly in 1997 as a new category of property to be classified, valued, and distributed in equitable distribution actions. It is a category that was intended to encompass post separation events that cause passive increases or decreases in the value of marital property, property acquired after separation as a result of preseparation efforts, etc. The original definition of divisible property included increases in marital debt, and this section amends the definition to also include decreases in marital debt.

This section became effective October 11, 2002. (WGR)

Agency Liability for State Excess Tort Liability

S.L. 2002-159, Sec. 43 (SB 1217, Sec. 43) amends G.S. 143-299.4, agency liability for tort claim liability in excess of $150,000 per claim, to authorize the Director of the Budget to determine whether the agency liable for the tort claim can pay the full claim in excess of $150,000, and if so, to order the agency to pay the entire claim. The Director is also authorized to determine which agencies may not be required to transfer lapsed salary funds into this liability risk pool when tort claims in excess of $150,000 have to be paid out of the excess liability pool created by this statute.

This section became effective October 11, 2002. (WR)

Studies

Legislative Research Commission

Studies Act of 2002

S.L. 2002-180, Sec. 2.1(1)a (SB 98, Sec. 2.1(1)a). See **Education.**

Chapter 5
Commercial Law

Karen Cochrane-Brown (KCB),
Trina Griffin (TG), Walker Reagan (WR), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Member Approval of Bylaw Amendment

S.L. 2002-27 (HB 1505) changes the Nonprofit Corporation Act by amending the minimal number of votes by members of a nonprofit corporation needed to amend the corporate bylaws, to correspond to the voting requirement for votes by members needed to amend the articles of incorporation. Under the act, nonprofit corporation bylaws can also be amended by a vote of two-thirds of the members present, in addition to a vote of a majority of the votes entitled to be cast, whichever is less. Notwithstanding this provision, the law still permits a larger majority to be required for this purpose, if so provided for in the articles of incorporation or bylaws.

The act became effective July 22, 2002. (WR)

Judicial and Execution Sales Clarification

S.L. 2002-28 (HB 1513). See **Civil Law and Procedure**.

Repeal Obsolete Banking Law

S.L. 2002-29 (HB 1539) repeals a provision of the banking laws that prohibits out-of-state financial institutions from establishing automated teller machines in the State. Most out-of-state financial institutions are currently allowed to establish teller machines in the State because federal law preempts state law. Concerns have also been raised that this provision might be unconstitutional as an unreasonable restraint on trade.

The act became effective July 22, 2002. (WR)

Miscellaneous Business Law Changes

S.L. 2002-58 (HB 1503) makes various changes to the business laws by clarifying who can call special meetings of a corporation, that a general partner of a partnership must sign documents filed with the Secretary of State's office, and the effect of a partner dying on a limited liability partnership.

Section 1 of the act restores the law changed in 2001, to allow a special meeting of a corporation to be called by any person given this right in the articles of incorporation or bylaws, regardless of whether the person is a corporate officer. This section also limits to nonpublic corporations the right of the holders of 10% of the shares of the company to call a special meeting. This provision also requires that the time period to receive the required signatures calling the special meeting be limited to 60 days.

Sections 2 and 3 recodify law enacted in 2001 dealing with corporate dissenters' rights arising from actions taken by shareholders without a meeting. The effect of the change in Section 2 is to require that shareholders who did not consent be informed of the corporate transaction that gives rise to the dissenters' rights.

Section 4 amends the law for filing of documents with the Secretary of State to clarify that a document filed on behalf of a general partnership must be executed by a general partner. This provision also clarifies that documents filed by entities other than general partnerships do not need to be signed by a general partner.

Section 5 adds a provision to the registered limited liability partnership law to clarify how the registration of a successor partnership relates to the registration of the former partnership when the former partnership dissolves. This provision provides that when the registered limited liability partnership is dissolved but its business is continued by some of its partners in a new partnership under the same name, the new partnership automatically succeeds to the registration of the dissolved partnership and the dissolved partnership is deemed to be registered until the winding up of its affairs is completed.

Sections 2, 3 and 4 became effective January 1, 2002, the date the other business law changes being amended became effective. Section 5 is effective retroactively to October 1, 1993; the date the law originally authorized limited liability partnerships. The remainder of the act became effective August 1, 2002. (WR)

Financial Institutions Asset Securitization

S.L. 2002-88 (HB 1099) adds a new article to the Uniform Commercial Code to permit certain financial institutions to waive their right to redeem collateral pledged as security for an obligation after the satisfaction of the obligation. This will permit proper asset securitization for financial institutions consistent with recent rulings by the Financial Accounting Standards Board (FASB). Asset securitization is a process by which a financial institution transfers assets (such as bundled mortgages or other loans) either by sale or as security for a loan to a Special Purpose Entity (SPE). The SPE then sells shares of the assets to investors. A recent ruling by FASB requires financial institutions using this process to obtain a legal opinion that the assets transferred are a 'true sale' and cannot be recovered by the financial institution. Under State law, a borrower in a secured transaction has the right to redeem the pledged assets when the loan is satisfied. This right is called the 'Equity of Redemption' and may not be waived under State law in most cases. The act allows North Carolina financial institutions to waive the right of equity of redemption in these transactions so that they can obtain a legal opinion that the transaction is a true sale as required by the FASB ruling.

The act became effective August 22, 2002. (KCB)

Amend Mortgage Lending Act

S.L. 2002-169 (HB 1307) amends the Mortgage Lending Act, enacted in 2001, to permit inexperienced exclusive mortgage brokers to initiate mortgage loans under limited situations, to authorize criminal history record checks to be performed on applicants and licensees, and to require the Commissioner of Banks to preapprove the fundamentals mortgage lending courses.

The act amends the law to authorize an exclusive mortgage broker as an individual who is authorized to initiate loans exclusively for a single mortgage banker. The act sets forth the specific requirements for a person to be licensed as an exclusive mortgage broker. Under this provision, a person with less than three years experience in residential mortgage lending may be licensed if the person does the following:

- Completes an approved residential mortgage-lending course of at least 40 hours and passes an approved exam.
- Acts exclusively for one mortgage banker. The mortgage banker will be responsible for supervising the exclusive mortgage broker and shall be jointly and severally liable with the broker for any claims arising out of the broker's activities.
- Does not base the broker's compensation on loan amount, interest rate, fees or any other terms of the loan brokered.

- Does not handle borrower or other third-party funds as part of the loan transaction.

The act allows the Commissioner to determine if the exclusive mortgage broker/mortgage banker relationship is in the public interest before granting a license. The act clarifies that exclusive mortgage brokers are not permitted to operate branch offices or supervise other licensees.

The act requires State and national criminal history record checks to be performed on applicants and licensees, and allows for the costs of the criminal record checks to be paid by the applicant or licensee. The act also authorizes the State Bureau of Investigation (SBI) to conduct the State criminal history background checks, and directs the SBI to obtain a national criminal history check from the FBI.

The act allows the Commissioner of Banks to review and approve required continuing education courses and materials. The Commissioner also has the authority to charge a review fee of $500 for an initial course review and a fee of $250 per year for an annual review of the course.

The act became effective October 23, 2002 and applies to persons who apply for licensure or renewal on or after that date. (WR)

NC Economic Stimulus and Job Creation Act

S.L. 2002-172 (HB 1734). See **Taxation**.

Small Business Contractor Initiative/Funds

S.L. 2002-181 (SB 832) creates the North Carolina Small Business Contractor Authority (Authority) in the Department of Commerce to provide loan guarantees, loans, and surety bonds for small, financially responsible North Carolina businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The Authority would be governed by 11 members and would administer two non-reverting special revenue funds. The Small Business Contract Financing Fund would provide loans and loan guarantees to small businesses to be used to perform government contracts. The Small Business Surety Bond Fund would guarantee sureties for losses incurred under a bid bond, payment bond, or performance bond on an applicant's government contract, and would execute and perform bid bonds, performance bonds, and payment bonds, and payment bonds itself as a surety for the benefit of the applicant in connection with a government contract. The act does not capitalize these funds but these funds will consist of State appropriations, loan repayments, fee receipts, proceeds from the disposition of property held by the Authority, investment income, and other funds. Financial assistance provided to a single recipient within a fiscal year from either fund may not exceed 15% of the total in that fund as of the beginning of that fiscal year. An applicant is guilty of a Class 2 misdemeanor if the applicant knowingly makes or causes to be made any false statement or report to the Authority. The act also requires that the Attorney General certify that proposed financial assistance to be provided by the Authority does not constitute raising money on the credit of the State or pledging the faith of the State directly or indirectly for the payment of any debt as provided in the North Carolina Constitution.

The act becomes effective January 1, 2003, and applies to offenses committed or causes of action arising on or after that date. The act expires June 30, 2006. (KCB)

Securities Fraud Protections

S.L. 2002-189, Secs. 2-6 and Sec. 8 (SB 1455, Secs. 2-6 and Sec. 8) do the following:

- Increase several fees related to the securities industry as follows:

- Increase from $200 to $300 the filing fee for the initial or renewal registration of an investment adviser.
- Increase from $200 to $300 the filing fee for the initial or renewal registration of an investment adviser covered under federal law.
- Increase from $200 to $250 the annual renewal fee for renewing a registration statement relating to redeemable securities to be offered for a period in excess of one year, other than securities covered under federal law.

➢ Prohibit a vendor from entering into a contract with the State if any officer, director, or owner of the vendor has been convicted of a state or federal securities fraud violation within the ten years immediately prior to the bid solicitation. Vendors submitting a bid or contract are required to certify that none of its officers, directors, or owners have been convicted of any such violation. The submission of a false certification is a Class I felony. The act also provides that a contract with an ineligible vendor is void. However, the contract may continue in effect until an alternative can be arranged when (i) immediate termination would result in harm to the public health and welfare, and (ii) the Secretary of Administration approves the continuation.

➢ Prohibit the Secretary of Administration from entering into a contract with a vendor or an affiliate of a vendor if the vendor or affiliate is incorporated in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the corporation's stock. The vendor is required to certify, upon submitting a bid or contract, that it does not violate these provisions. The definition of "tax haven country" is identical to the definition of the same term found in federal legislation currently before Congress that would prohibit the federal government from using defense-spending funds as payment on any new contracts with "corporate expatriates."

The fee increases became effective November 1, 2002. The sections relating to State contracts became effective December 1, 2002, and apply to contracts entered into on or after that date. The remainder of the act became effective October 31, 2002. (TG)

Studies

Legislative Research Commission

Internet Spam

S.L. 2002-180, Sec. 2.1(3) (SB 98, Sec. 2.1(3)). See **Technology.**

Amend Public Enterprise Customer Billing

S.L. 2002-180, Sec. 2.1(4)b (SB 98, Sec. 2.1(4)b) authorizes the Legislative Research Commission to study excluding airports from the public enterprise billing information privacy law. The Commission may report its findings, together with any recommended legislation, to the 2003 General Assembly.

This section became effective October 31, 2002. (KCB)

New / Independent Studies / Commissions

Legislative Study Commission on the Horace Williams Airport

S.L. 2002-180, Part XI (SB 98, Part XI) creates the Legislative Study Commission on the Horace Williams Airport. The Commission is directed to study the utility of maintaining the operation of the Horace Williams Airport in Chapel Hill, taking into consideration issues of safety, access and expense of operation. The Commission is directed to submit a final report to the 2003 General Assembly on or before its convening. Upon the earlier of the filing of its final report or the convening of 2003 General Assembly, the Commission shall terminate.

This part became effective October 31, 2002. (KCB)

Legislative Study Commission on Securities Fraud Enforcement Laws

S.L. 2002-180, Part XVI (SB 98, Part XVI) creates the Legislative Study Commission on Securities Fraud Enforcement Laws. The Commission shall study the State securities fraud enforcement laws and the provisions of Senate Bill 1455, 4th Edition, Strengthen Securities Fraud Enforcement Laws, introduced in the 2002 Session of the 2001 General Assembly. The Commission is directed to submit a final written report on or before March 15, 2003. Upon filing it final report, the Commission shall terminate.

This part became effective October 31, 2002. (KCB)

Legislative Regional Economic Development Commission Reporting Requirements Study Commission

S.L. 2002-180, Part XX (SB 98, Part XX) creates the Legislative Regional Economic Development Commission Reporting Requirements Study Commission. The Commission shall study the current reporting requirements applicable to the seven Regional Economic Development commissions of the State. The Commission shall make its final report to the 2003 General Assembly upon its convening.

This part became effective October 31, 2002. (KCB)

Referrals to Departments, Agencies, Etc.

Pension Assurance Fund Study

S.L. 2002-189, Sec. 7 (SB 1455, Sec. 7) directs the State Treasurer, in consultation with the Secretary of State, to study the best methods for creating, funding, and paying claims from a "Pension Assurance Fund" designed to protect the retirement savings and investments of employees in private industry who, through no fault of their own, have suffered significant losses due to securities fraud violations. The State Treasurer and the Secretary of State must develop legislative recommendations and report them to the General Assembly by March 1, 2003. This section also authorizes the Legislative Research Commission to study this issue.

This section became effective October 31, 2002. (TG)

Referrals to Existing Commissions/Committees

Securities Fraud Enforcement Study

S.L. 2002-189, Sec. 1 (SB 1455, Sec. 1) authorizes the General Statutes Commission to study the provisions of the 4th edition of Senate Bill 1455 titled "Strengthen Securities Fraud Enforcement Laws," in consultation with the Secretary of State, the Securities Industry Association, the North Carolina Bar Association, and other interested parties, and to make recommendations to the 2003 Regular Session of the 2003 General Assembly.

This section became effective October 31, 2002. (TG)

Chapter 6
Constitution And Elections

Erika Churchill (EC), Bill Gilkeson (BG), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Judicial Campaign Reform Act

S.L. 2002-158 (SB 1054) does the following things:

- **Nonpartisan Election of Appellate Judges.** The act provides that Justices of the Supreme Court and Judges of the Court of Appeals will be elected on a nonpartisan ballot. The new election system will begin in 2004. Prior law provided for those appellate judges to be elected by party primary and election. Before 1996, judges at all levels were elected by that same partisan method, but the nonpartisan ballot was established for Superior Court judge elections in 1996, and for District Court judges in 2002. The act adds appellate court judges to the nonpartisan ballot. In 2004, judges at all levels will be elected by the same nonpartisan method. That method provides that judicial candidates will file their notices of candidacy during even-numbered years at the same time as candidates in primaries for other offices. On the same day as party primaries, there will be held a nonpartisan judicial primary. Its effect will be to eliminate all but two candidates for each judgeship. If only one or two candidates filed for a judgeship, that seat will have no nonpartisan primary. In the nonpartisan general election, held on the same November day as the partisan general election, voters will choose between the two remaining candidates for each seat.
- **Judicial Voter Guide.** The act gives the State Board of Elections the duty of publishing a voter guide about appellate judicial races. The State Board will be required to distribute the guide to "as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective". It distributes the guide before the primary and before the general election. The content of the guide will be provided by the candidates themselves, including a statement of up to 150 words. The State Board is directed to edit out any "obscene, profane, or defamatory language". If the State Board rejects language, the candidate has three days to submit another statement.
- **Establishing North Carolina Public Campaign Financing Fund.** The act establishes the North Carolina Public Campaign Financing Fund. The Fund, to be operated by the State Board of Elections, will provide full campaign funding on a voluntary basis in a general election to candidates for appellate judgeships who meet certain threshold qualifying requirements and agree to limit their campaign fundraising and spending. Before filing a declaration of intent to enter the program, a candidate must not raise or spend more than $10,000 for any campaign purpose after the beginning of the year before the election. After declaring intent to participate, a candidate must raise the minimum in qualifying contributions as follows:
  - Qualifying contributions must come in amounts between $10 and $500 each.
  - They must come from North Carolina registered voters only.
  - They must come from at least 350 contributors.
  - They must be raised during the qualifying period, which begins September 1 of the year before the election and ends primary day.

- The sum of the qualifying contributions must remain within a range pegged to a multiple of the filing fee for the office. The minimum is about $33,000 for Court of Appeals judges and the maximum is about $69,000 for Supreme Court justices. Any excess contribution must be returned to the donor. ***See Chart below for details.***
- Candidates must spend only up to the qualifying contribution cap during the primary, raised from qualifying contributions and personal/family contributions (up to $1,000 per family member). Candidates must agree to spend only public funds and remaining qualifying donations in the general election.
- Once qualified to participate in the program, appellate judicial candidates may receive from the Public Campaign Financing Fund the following benefits:
  - In a contested primary, rescue funds to match opposition spending that exceeds about $67,000 -- up to a total of about $135,000 in rescue funds.
  - In the general election, an initial amount of 175% of the position's salary for Supreme Court candidates ($201,300) and 125% of the salary for Court of Appeals candidates ($137,500).
  - In the general election, rescue funds to match opposition spending that exceeds the initial award, up to twice that amount. The opposition spending includes that done by an opposition candidate or independent expenditures. The act provides for expedited reporting to make the rescue provision work.

To enforce compliance, the act contains a civil fine of up to $10,000 for a violation, or up to treble the amount of any financial transactions involved in the violation, whichever is greater. A certified candidate in violation may have to give back all money received from the Fund.

- **Financing the Fund.** To support the Public Campaign Financing Fund, the act relies on a mixture of a voluntary $50 contribution requested from attorneys at the time they pay their privilege license tax, effective July 1, 2003; leftovers from Candidates Financing Fund; voluntary contributions generally; and a new $3 check-off on the State individual income tax form, effective for the tax years beginning January 1, 2003. No appropriations from the General Fund are permitted. The Candidates Financing Fund was established in the late 1980s to provide public financing in campaigns for Governor. Through voluntary contributions from their income tax refunds, taxpayers have trickled slightly more than $500,000 into that Fund since 1989. It has never been distributed to candidates. The act abolishes that Fund, effective January 1, 2003. Upon closing the Fund out, the Department of Revenue is authorized to remove $178,600 from it to meet the Department's own costs in setting up tax forms for the new Fund. The Department must then transfer the remainder of the money in the Candidate Financing Fund to the new Public Campaign Financing Fund.
- **Special Contribution Limits.** To facilitate the operation of the public financing program, the act makes two changes to the law limiting contributions for candidates for appellate judgeships:
  - Lowers contribution limits to $1,000 for all appellate judicial candidates, whether or not they are in the program. Family members may give $2,000.
  - To address last minute "surprise attacks," the act embargos fundraising in the 21 days before Election Day by a non-certified candidate who opposes a certified candidate who has not maxed out on getting rescue money. The non-certified candidate can still add more money from personal funds.

Except for special effective dates already described, the act became effective on October 10, 2002. (BG)

Chart – How Amounts Are Calculated in S.L. 2002-158

Office	Salary	Filing Fee *(1% of salary)*	Minimum Amount to be Raised in Qualifying Contributions *(30x filing fee)*	Maximum Amount to be Raised in Qualifying Contributions * *(60x filing fee)*	Distribution Amount – Court of Appeals # *(125x filing fee)*	Distribution Amount – Supreme Court # *(175x filing fee)*
Supreme Court **	$115,000	$1150	$34,500	$69,000 *		$201,300 #
Court of Appeals	$110,000	$1100	$33,000	$66,000 *	$137,500 #	

** Numbers slightly higher for Chief Justice.

* This is also the limit on spending during primary, unless rescue money is triggered. Total rescue money is capped at twice the amounts above: $132,000 for Court of Appeals and $138,000 for Supreme Court candidate.

This is also the limit on spending during the general election, unless rescue money is triggered. Total rescue money is capped at twice the amounts above: $275,000 for Court of Appeals to $402,600 for Supreme Court candidate.

Miscellaneous Election Changes

S.L. 2002-159 (SB 1217), the 2002 Technical Corrections Bill, made miscellaneous technical changes to the election laws, and several substantive changes. The substantive changes include:

- **Voted Ballots.** Section 55(o) of the act specifies that all voted ballots are treated as confidential and are not to be disclosed in such a way as to show how a particular voter voted, unless so ordered by a court. This section became effective October 11, 2002.
- **Absentee Ballots.** Section 57 of the act specifies that the proper method of requesting an absentee ballot is either a written request or a signed request printed by the board of elections. This section becomes effective January 1, 2003, and applies to any report filed on or after that date.
- **Campaign Contributions**
  - Section 55(k) of the act provides that a campaign contribution may be made by credit card, debit, or other noncash method of payment subject to written verification in addition to cash or check. This section becomes effective January 1, 2003, and applies to all primaries and election held on and after that date.
  - Section 57.1 of the act provides that the bank account numbers included in campaign finance reports are confidential except as necessary to conduct an audit or investigation, or as required by a court of law, or the treasurer waives confidentiality. This section becomes effective January 1, 2003, and applies to any report filed on or after that date.
  - Section 57.3 of the act provides that a political committee may incorporate and still contribute money to a candidate or political committee, if the political party incorporates as a non-profit and has as its sole purpose accepting contributions and making expenditures to influence elections. This section becomes effective January 1, 2003.
- **Precinct Lines.** Section 56 of the act provides that from October 1, 2002 to December 31, 2003 no county board of elections may alter a precinct line except to conform to the 2000 Census block boundaries. This section became effective October 11, 2002.

- **Vacancies in District Court Judge Seats.** Section 58 of the act provides for a continuation of the current practice of filling vacancies in district court judge seats filled by a nominee of a political party. The current practice is that if the seat was held by a nominee of a political party then the district bar submits three names to the Governor for consideration in filling the vacancy. This section became effective October 11, 2002. (EC)

Redistricting and Temporary Election Changes (2002 Extra Session)

S.L. 2002-1 Extra Session (HB 4) Sutton House Plan 5 and Senate Fewer Divided Counties.

S.L. 2002-2 Extra Session (SB 3) Sutton House Plan 5 Corrected.

S.L. 2002-21 Extra Session (SB 2) 2002 Election Schedule.

Background – Late in its 2001 Session, the General Assembly enacted bills redistricting the State House and the State Senate. On February 11, 2002, it received approval of both those redistricting plans from the U.S. Department of Justice under Section 5 of the Voting Rights Act. Candidate filing for seats under the three plans began February 18, 2002, and ended March 1, 2002. That filing was done according to a special delayed schedule the General Assembly had established in another piece of 2001 legislation. The legislation had been designed to compress the early part of the 2002 election schedule into a timeframe that would make possible a primary held on the regular date, May 7.

Stephenson v. Bartlett -- During the same period, however, a lawsuit was working its way through the State court system that would derail the effects of all that 2001 legislation. It was the case of *Stephenson v. Bartlett*, brought by five plaintiffs active in the Republican Party, including the House and Senate Minority Leaders. Defendants included the State Board of Elections, the Speaker of the House, and the President Pro Tem of the Senate. The complaint, filled November 13, 2001, alleged among other things that in its 2001 redistricting the General Assembly had violated the State Constitution's Whole County Provision. The Whole County Provision, sometimes called the WCP, prohibits the drawing of State House or State Senate districts that divide counties. It is contained in Article II, Secs. 3 and 5. It was adopted in 1968 and incorporated in the full Constitutional rewrite of 1971. The General Assembly, however, had disregarded the WCP since 1981, when the U.S. Department of Justice had denied it approval under Section 5 of the Voting Rights Act. An early 1980s lawsuit had challenged the General Assembly's approach of disregarding the WCP on the grounds that it should apply in the 60 counties not covered by Section 5 of the Voting Rights Act. But a federal court, in the 1983 case of *Cavanagh v. Brock*, ruled that no one would have intended the WCP to apply in 60 counties but not the other 40. Consequently, the *Cavanagh* court said the WCP had no legal force or effect. The *Stephenson* plaintiffs argued that the *Cavanagh* court was wrong, that State courts instead of federal courts should interpret the State Constitution, and that the proper approach was to harmonize the WCP with the requirements of federal law, including the Voting Rights Act. To do that, the plaintiffs argued, legislative redistricting should begin with drawing whatever majority black or Native American districts are required by the Voting Rights Act and dividing counties in drawing those districts if need be. Otherwise, the legislature should group counties into districts without splitting counties. The plaintiffs conceded that doing so without violating the federal one-person one-vote requirement would require creating large multi-member districts. They offered several examples of such plans, some containing districts that would elect as many as eight members.

February 20, 2002: Trial Court Ruling Against Plans -- The trial court judge in the *Stephenson* case, Judge Knox V. Jenkins, Jr. of Johnston County Superior Court, granted a motion for summary judgment for the plaintiffs, saying he agreed with their interpretation of the Constitution and enjoining the further holding of elections under the 2001 plans. He stayed his own injunction, however, pending appeal. The candidate-filing period, which had just begun, proceeded through its close of March 1.

March 7, 2002: Halting of Elections – The State Supreme Court, having accepted the appeal of Jenkins' ruling, issued its own injunction against holding legislative elections under the 2001 plans. The State Board of Elections followed with its own ruling halting the preliminaries for non-legislative elections. With a full ballot of candidates already filed, the 2002 election year process came to a halt.

April 30, 2002: Supreme Court Opinion – The State Supreme Court issued its opinion in *Stephenson v. Bartlett*. Five of the seven justices voted to invalidate the 2001 plans as violating the WCP. However, the justices rejected the plaintiffs' argument that the WCP must result in large multi-member districts. The opinion said the equal protection clause of the State Constitution carries a presumption that all legislative districts shall be single-member districts. That preference for single-member districts, as well as the Voting Rights Act, must be harmonized with the WCP. The Court said districts must be drawn according to the following steps:

1. Draw districts required by Voting Rights Act.
2. Draw as one-county single-member districts any county with the right population for a single-member district.
3. Subdivide into compact single-member districts any county with right population for a multi-member district.
4. Combine remaining counties into groupings that have the right population for multi-member districts, and then subdivide the groupings into compact single-member districts, minimally crossing county boundaries.

The Supreme Court directed Judge Jenkins to determine if the General Assembly could redraw in time to hold primaries and elections in 2002. If not, the judge was empowered to draw interim districts for use in the 2002 elections only. The defendants sought an emergency stay from the U.S. Supreme Court.

May 7 and 8, 2002: Calling of Extra Session – Governor Michael Easley called the General Assembly into Extra Session May 14 to draw districts to comply with the *Stephenson* opinion. Judge Jenkins gave the General Assembly, as well as the plaintiffs, until May 20 to submit to him *Stephenson*-compliant plans.

May 17-21, 2002: Enacting of Plans – The General Assembly enacted S.L. 2002-1 Extra Session (HB 4), which contains a House plan and a Senate plan designed to comply with *Stephenson*. Those plans were designated in the General Assembly's DistrictBuilder computer database as "Sutton House Plan 5" and "Senate Fewer Divided Counties." The plans were made effective for the 2002 election year. The plans contained substantially the same heavily black and Native American districts that were in the 2001 plans. The Senate plan split a total of 17 counties. The House plan split a total of 51 counties. The House plan was discovered to contain a misplaced precinct in Edgecombe County, and the error was corrected on May 21 with the enactment of S.L. 2002-2 Extra Session (SB 3). The enacted plans were submitted on May 20 to Judge Jenkins and on May 21 to the U.S. Department of Justice for Voting Rights Act approval. Judge Jenkins also received a House and Senate plan from the *Stephenson* plaintiffs, "VRA Review 001" (House) and "VRA and Constitutional Senate Plan."

On the same day the General Assembly ratified the plans, U.S. Chief Justice William Rehnquist denied the request for a stay of *Stephenson*.

May 31, 2002: Judge Jenkins's Interim Plans –Judge Jenkins issued an order imposing interim House and Senate plans for the 2002 elections. His Interim House Plan used the framework of the General Assembly's May 17 plan, but made changes in the Wilmington area and in Cabarrus, Guilford, Onslow, and Wake counties. His Interim Senate Plan, however, used the framework of the plaintiff's "VRA and Constitutional Senate Plan," but made changes in Guilford and Catawba counties. The defendants appealed.

June 4, 2002: Supreme Court's Delayed Appeal – The State Supreme Court declined to stay Judge Jenkins's order pending appeal. The Supreme Court agreed to hear that appeal, but not until January after the 2002 elections.

June 12-July 12, 2002: Battle Over Voting Rights Act Approval – Uncertainty surrounded how and by whom Judge Jenkins's Interim Plans should be submitted for Voting Rights Act approval. Instead of following the more common administrative route through the U.S. Department of Justice, the State Board of Elections filed an action with the U.S. District Court for the District of Columbia. The State Board made no argument for the plans, stating only that it needed an answer so it could proceed with elections. Both plaintiffs and defendants in *Stephenson* filed amicus briefs. Judge Jenkins, meanwhile, himself submitted his plans to the U.S. Department of Justice. He also submitted the Supreme Court's *Stephenson* opinion, and he requested that the Justice Department reconsider its 1981 denial of preclearance to the WCP. A separate lawsuit, *Sample v. Jenkins*, was making its way into federal court, seeking an injunction against any enforcement of the *Stephenson* opinion and plans pursuant to it, on the ground that the opinion had not and was not likely to receive Voting Rights Act approval. The D.C. District Court declined to enjoin the use of the Interim Plans, despite arguments that delay would result in harm to minority voters by the necessary elimination of the runoff primary. The court said there was no need to interrupt the process being conducted by the Justice Department. Similarly, a panel of judges in the U.S. Eastern District of North Carolina denied a motion in *Sample v. Jenkins* to halt elections under the Interim Plans. On July 12, the Justice Department sent a letter to Judge Jenkins giving Voting Rights Act approval to the Interim Plans and the *Stephenson* opinion, as well as rescinding its 1981 objection to the WCP, if enforced as prescribed in *Stephenson*.

July 16-24, 2002: New Election Schedule; Primary Without Runoff – Following the Justice Department approval of the plans, the General Assembly, still in Extra Session, ratified S.L. 2002-21 Extra Session (SB 2), setting a special election schedule for 2002. The act specified that the primary would be held September 10. The candidate with a plurality would win the party's nomination; for 2002 only, the runoff primary for frontrunners receiving 40% or less of the vote would be dispensed with. Those provisions would apply not only to legislative elections but also to elections for all offices. The candidate filing conducted February 18 through March 1 would be reopened only for legislative seats. However, if someone who had filed for another office wished instead to file for a legislative seat, that person would be allowed to do so, but would have to drop out of the other contest, and filing for that other office would be reopened for three days. If the person had already been nominated for the other office through lack of primary opposition, that person could switch to a legislative candidacy by resigning the other nomination, with that vacancy to be filled by a party committee. Beyond those specifics, the State Board of Elections was given broad authority to set up the 2002 election schedule. On July 17, the day after the bill was ratified, the State Board of Elections set the legislative filing period to begin July 19 and end July 26. The U.S. Department of Justice gave its approval July 24 to the primary schedule bill under Section 5 of the Voting Rights Act. (BG)

Studies

New / Independent Studies / Commissions

Studies Act of 2002

S.L. 2002-180, Part IV (SB 98, Part IV) authorizes the creation of the On-Line Voting Commission Study. The Commission is to report to the 2003 General Assembly with the results of a study of the following:

- The state of technology with regard to on-line voting.
- The experiences of other states and jurisdictions in the use of on-line voting.
- The ability of the average voter to comprehend the on-line voting method.
- The existence of the digital divide, and ways to overcome it, as applicable.
- Concerns of privacy and secrecy.
- Cost.

This part became effective October 31, 2002. (EC)

Chapter 7
Criminal Law and Procedure

Brenda Carter (BC), Hal Pell (HP),
Walker Reagan (WR), Susan Sitze (SS), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Open Container Sunset Repeal

S.L. 2002-25 (HB 1488) extends the sunset on the law governing transportation of open containers of alcoholic beverages. S.L. 2000-155, Section 4 amended G.S. 20-138.7 to prohibit the transportation of open containers of alcohol in vehicles even if the driver of the vehicle had not been drinking. When that law was originally enacted, Section 21 of that act provided that the new law would expire on September 30, 2002. The act extends the expiration date to September 30, 2006.

The act became effective July 22, 2002. (SS)

Electronic Criminal Process

S.L. 2002-64 (HB 1583), recommended by the Courts Commission, amends the Criminal Procedure Act by establishing procedures for issuing criminal process by electronic means using electronic signatures, and for saving or filing process electronically (G.S. 15A-301). The Administrative Office of the Courts (AOC) is directed to create and maintain, in cooperation with state and local law enforcement agencies, an automated and secure electronic repository for criminal process (G.S. 15A-301.1). This repository will allow a magistrate to create, sign, issue and file a warrant, order for arrest, or other criminal process in electronic form. The process will then be retained in the electronic repository. The system will also allow the tracking and accessing of criminal process through remote electronic means. Only authorized judicial officials and employees, and law enforcement agencies that have compatible electronic access capacity, will have access to the system. The system will provide for printing criminal process in paper form. Any process in the Electronic Repository becomes part of the official records of the Clerk of Superior Court of the county for which it was issued.

The act specifies procedures to be followed in serving and returning process that has been electronically stored. A printed copy of the stored electronic process may be served by delivering it to the person to be served. The printed copy must be served not later than 24 hours after it has been printed. If not served within that time, that fact must be recorded in the Electronic Repository and the printed copy destroyed. The process may again be printed in paper form at later times and at the same or other places. The act provides that law enforcement agencies that do not have compatible remote access to the Electronic Repository may make reports of service or failure of service to the Clerk of Superior Court, who will then enter the required information into the Repository.

The act becomes effective January 1, 2003 and applies to all acts done on or after that date. (HP)

Domestic Violence Commission Rulemaking

S.L. 2002-105 (HB 1534). See **State Government.**

Parks and Recreation Mutual Aid Agreement Authority

S.L. 2002-111 (SB 1262). See **Environment and Natural Resources.**

Close Incest Loophole to Protect Minors

S.L. 2002-119 (HB 1276) amends the incest statutes to provide punishment levels consistent with other similar criminal offenses.

The act increases the penalty for incest committed against minors under the age of 16 by amending the statute to reflect the same punishment levels used in 1st degree rape and statutory rape. The changes provide for three possible felony classifications for incest based on the following criteria:

- If a person commits incest with a child under the age of 13 and the person is at least 12 years old and at least 4 years older than the child when the incest occurred, the act is punishable as a Class B1 felony.
- If a person commits incest with a child who is 13, 14, or 15 years old and the person is at least 6 years older than the child when the incest occurred, the act is punishable as a Class B1 felony.
- If a person commits incest with a child who is 13, 14, or 15 years old and the person is at least 4 years, but less than 6 years, older than the child when the incest occurred, the act is punishable as a Class C felony.
- In all other cases of incest, the act is punishable as a Class F felony.

The act also provides that no person under the age of 16 can be held criminally liable for acts of incest if the other party to the incest is at least 4 years older when the incest occurred. Additionally, the punishments for committing incest with a person's uncle, aunt, niece, or nephew is now the same as the punishment for committing incest with a person's grandparent, grandchild, parent, child/stepchild, adopted child, or sibling.

The act became effective December 1, 2002, and applies to offenses committed on or after that date. (SS)

Comply With Federal Violence Against Women Act

S.L. 2002-126, Sec. 18.6 (SB 1115, Sec. 18.6), as amended by S.L. 2002-159, Sec. 47 (SB 1217, Sec. 47), amends North Carolina's Assistance Program for Victims of Rape and Sex Offenses (Program) to comply with the federal Violence Against Women Act of 2000. The Program provides victims of sexual assault up to $1,000 of assistance for expenses associated with their assault.

The act expands the eligibility criteria for assistance under the Program by:

- Adding victims of statutory rape to the list of victims eligible for assistance.
- Providing that a sexual assault victim is eligible for assistance if within five days of the assault or attempted assault the victim reports the assault to a law enforcement officer, and a forensic medical examination is performed on the victim.
- Authorizing the Secretary of Crime Control and Public Safety to waive either five-day requirement for good cause.

The act requires the State to bear the full out-of-pocket cost of forensic medical exams for sexual assault victims without limit. This effectively removes the $1,000 cap on assistance only if the full out-of-pocket costs of the forensic medical exam exceed $1,000. "Forensic medical examination" is defined as "an examination provided to a sexual assault victim eligible for assistance under this Program by medical personnel who gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include an examination of physical trauma, a patient interview, and a collection and evaluation of evidence." The act also

requires that payment for the forensic medical examination be remitted within 90 days after receiving written notification of the expense.

The act became effective October 15, 2002. (SS)

The North Carolina Child Alert Notification System – NC CAN (Amber Alert)

S.L. 2002-126, Sec. 18.7 (SB 1115, Sec. 18.7) codifies the North Carolina Child Alert Notification System (NC CAN). The NC CAN program provides notice to the public in certain cases of child abduction.

The NC CAN program is administered by the North Carolina Center for Missing Persons (Center). The act creates a new G.S. 143B-499.7 which authorizes the NC CAN system to disseminate information regarding missing children when the following criteria are met:

- The child is 12 years of age or younger
- The child is believed to be in danger of injury or death
- The abduction is not known or suspected to be by a parent of the child
- The child is not a runaway or voluntarily missing, and
- The abduction has been reported to and investigated by a law enforcement agency.

The NC CAN system may also be activated for children ages 13 to 17 on a case-by-case basis, if all other criteria have been met and the Center believes the dissemination of information to be beneficial in the possible recovery of the missing child. Additionally, if the abduction of the child is known or suspected to be by a parent of the child, the Center, in its discretion, may disseminate information through the NC CAN system if the child is believed to be in danger of injury or death.

The Center is directed to adopt guidelines and develop procedures for the statewide implementation of the NC CAN system and to provide education and training to encourage radio and television broadcasters to participate in the system. The Center is directed to work with the Department of Justice to develop training materials for law enforcement, broadcasters and community interest groups. The Center is also directed to consult with the Department of Transportation to develop procedures for the use of overhead permanent changeable message signs to provide information on the abduction of a child meeting the criteria established by the act, when information is available that would enable motorists to assist law enforcement in the recovery of the missing child. Additionally, the Center is to consult with the Division of Emergency Management to develop a procedure for the use of the Emergency Alert System to provide information on the abduction of a child meeting the criteria.

The act authorizes the Department of Crime Control and Public Safety to accept grants, contributions, devises, bequests, and gifts, on behalf of the Center, to be kept in a separate nonreverting fund, and to be used to fund the operations of the Center and the NC CAN system.

The act requires law enforcement agencies to notify the center as soon as practicable after receipt of a missing child report meeting the criteria established by the act.

The provision regarding law enforcement reports to the Center became effective October 1, 2002. The remaining provisions of the act became effective September 30, 2002. (SS)

Clarification of Court Fees

S.L. 2002-135 (HB 1187) clarifies the court fees for legal services and makes various court fees uniform.

The act amends G.S. 7A-306(a)(2) and G.S. 7A-307(a)(2) to clarify that the $1.05 that is to be paid to the North Carolina State Bar for the support of Legal Services is to come from the $30.00 General Court of Justice fee.

The act amends G.S. 7A-307(b1) to increase the deposition fee from $5.00 to $10.00, the docketing and index fee for the first page of a will from $1.00 to $6.00, and the petition fee for year's allowance to a surviving spouse or child from $4.00 to $8.00.

The act also amends G.S. 7A-308(a)(4), as amended by S.L. 2002-126 (SB1115), Section 29A.13.1(a), to raise the deposition fee from $7.50 to $10.00.

The act became effective October 1, 2002 and applies to all acts done on or after that date. (SS)

Criminal History Check/Conform Sex Offender Registration

S.L. 2002-147 (HB 1638) amends various statutes regarding criminal history background checks to ensure that national criminal history background checks will be allowed pursuant to those statutes after December 31, 2002, and allows the State Bureau of Investigation (SBI) to charge a fee to the applicant for conducting the checks. The act also amends the sex offender registration statutes to conform to the federal Campus Sex Crimes Prevention Act.

The act amends the statutes of the following boards and agencies to conform to the federal requirements necessary to enable them to conduct national criminal history background checks:

- The Alcohol Law Enforcement Division when investigating ABC permit applicants
- Local Law Enforcement agencies when issuing precious metal dealer permits
- The Private Protective Services Board
- The Alarm Systems Licensing Board
- The Board of Law Examiners
- The Medical Board
- The State Board of Dental Examiners
- The Board of Pharmacy
- The Board of Mortuary Science
- The Real Estate Commission
- The Commissioner of Labor, when investigating Private Personnel Service license applicants
- The Structural Pest Control Committee, and
- Cities, when investigating taxi license applicants.

Any national criminal history checks conducted pursuant to these sections will be conducted through the SBI, which is authorized to charge a fee to the applicant for conducting the check.

The act amends the sex offender registration statutes to require a registered sex offender to notify the sheriff, at registration, if the person required to register is a student or employee of an institution of higher education, or expects to become a student or employee of an institution of higher education within one year of registering. If so, the offender must provide the name and address of the educational institution at which the offender is a student or employed, or expects to be a student or employed. At any time, if a person required to register changes their academic status or employment status, either by becoming a student or employee of an institution of higher education, or by terminating enrollment or employment at an institution of higher education, they shall notify the sheriff no later than the tenth day after the change in status. Failure to comply with these provisions is a Class F felony.

The act also requires the Division of Criminal Statistics of the Department of Justice to notify the appropriate law enforcement unit at an institution of higher education as soon as possible upon receipt of registration information or notice of a change of academic or educational employment status. If an institution of higher education does not have a law enforcement unit, then the Division shall provide the information to the local law enforcement agency that has jurisdiction for the campus.

The sections of the act regarding national criminal history background checks became effective October 9, 2002. The sections of the act regarding sex offender registration became effective October 9, 2002 and apply to persons convicted on or after that date. (SS)

Felonious Access to Government Computers

S.L. 2002-157 (HB 1501) increases the punishment for unlawfully accessing or for causing a denial of service affecting a computer or computer program, system, or network that is owned, operated, or used by any State or local governmental entity. The act makes it a Class F felony to willfully access a government computer for the purpose of executing fraud or for obtaining property or services by means of false or fraudulent pretenses. If committed for purposes other than fraud, the offense is a Class H felony; however, unlawfully accessing educational testing material or grades that are in a government computer is a Class 1 misdemeanor. The act makes it a Class F felony to willfully alter, damage, or destroy a government computer, and makes it a Class H felony to willfully and without authorization deny or cause the denial of government computer services. The offense includes denial of services effectuated by the direct or indirect introduction of a computer virus or worm.

The act became effective December 1, 2002 and applies to offenses committed on or after that date. (BC)

Offender Supervision Compact/Transfer

S.L. 2002-166 (HB 1641) withdraws the State from the Interstate Compact for the Supervision of Parolees and Probationers and authorizes and directs the Governor to execute the Interstate Compact for the Supervision of Adult Offenders (Compact) on behalf of the State. The Compact is a cooperative effort among the compacting states to regulate, supervise, and track the interstate movement of offenders who have been released to the community under the jurisdiction and supervision of courts, paroling authorities, and other criminal justice agencies. In accordance with the requirement that each compacting state establish the State Council for Interstate Adult Offender Supervision, the act establishes The North Carolina State Council for Interstate Adult Offender Supervision (North Carolina Council) consisting of 11 members. The Secretary of Correction or the Secretary's designee is a member of the North Carolina Council and serves as its chairperson. Membership will include one member of the Senate, appointed by the President Pro Tempore, and one member of the House of Representatives, appointed by the Speaker. The Governor, the Chief Justice of the Supreme Court, and the Director of the Division of Community Corrections will make other appointments. Effective January 1, 2003, the act also provides for the State to participate in treaties between the United States and foreign countries for the transfer or exchange of convicted offenders.

The provisions regarding the new Compact and the North Carolina Council became effective October 23, 2002. The repeal of provisions regarding the Interstate Compact for the Supervision of Parolees and Probationers become effective October 23, 2003. (BC)

Address Confidentiality Program

S.L. 2002-171 (HB 1402). See **Children and Families.**

Financial Fraud Protection Enhancement

S.L. 2002-175 (HB 1100) amends G.S. 14-119 (forgery, and counterfeiting of instruments) and several statutes in Chapter 14, Articles 19B and 19C (financial transaction card theft and financial identity fraud). The act also amends the law to enhance the civil remedy provisions for victims of financial identity fraud.

The act rewrites G.S. 14-119 to allow State prosecution for possession of counterfeit currency. The term "currency" is added to the items listed as "instruments," and the term "counterfeit" is defined. The federal government exercises discretion as to whether it will enforce

the counterfeiting laws and prosecution may depend upon the amount of currency seized. In many cases, counterfeit money is seized in conjunction with other acts in violation of State law provisions, e.g., controlled substances laws. Under the new statute, possession alone of counterfeit currency, with the intent to injure or defraud any person, financial institution, or governmental unit, is a Class I felony. If a person attempts to pass counterfeit currency, he may be charged under both G.S. 14-119 and G.S. 14-120 (uttering false, forged, or counterfeited instrument). The act also creates the offense of trafficking in counterfeit instruments. A person who transports or possesses five or more counterfeit instruments, with the intent to injure or defraud any person, financial institution, or governmental unit, is subject to punishment as a Class G felon.

The act adds measures designed to aid in the enforcement of the financial fraud laws. A provision (G.S. 14-113.9(a)(5)) was added to outlaw the use of scanning devices to obtain information encoded on another person's financial transaction card. The term "scanning device" is defined in G.S. 14-113.8(10). Scanning devices have been used to copy and store data from the magnetic stripes of credit, debit, ATM, and other cards. A person, with intent to defraud, who uses a scanning device to obtain the encoded information, or receives the information from another, is guilty of financial transaction card theft.

The act amends G.S. 14-113.20, which makes it unlawful to use another person's identifying information with the intent to defraud. The act adds a provision that makes the use of identifying information of a deceased person unlawful. It also deletes the requirement that the identifying information was obtained, possessed, or used "without consent." Any person who lawfully obtains or possesses the identifying information of another is in violation of the statute if there is intent to defraud either the person who provided the information or a third party. The statute is also amended to make it unlawful to use the information to obtain anything of value, benefit, or advantage using the identifying information of another. For example, using another's identity to avoid deportation, to obtain employment, or to obtain welfare benefits, are violations of the statute. Several new matters are listed under the definition of "identifying information": biometric data, fingerprints, passwords, and parent's legal surname prior to marriage.

The new law enhances the punishment for a violation of the statute. A person guilty of financial identity fraud is subject to punishment as a Class G felon (previously Class H). If the victim suffers arrest, detention, or conviction of an offense, then the offense is punishable as a Class F felony (previously Class G). The new law provides that if the perpetrator possesses the identifying information of three or more persons, then the offense is punishable as a Class F felony. A new crime of trafficking in stolen identities is added to the statutes (G.S. 14-113.20A). A person who sells, transfers, or purchases the identifying information of another with the intent to commit financial identity fraud is guilty of a Class E felony. A person convicted under the law may be ordered to pay restitution for financial loss caused by the crime, including actual losses, lost wages, attorneys' fees, or other costs in connection with any criminal, civil, or administrative act brought against the victim resulting from the misappropriation of the victim's information.

The act adds G.S. 1-539.2C to the General Statutes. This provision, which allows for civil damages by a victim of financial identity fraud, was previously found at G.S. 14-113.22(b). The act also makes several amendments to the damages provision, including: the estate of a deceased person may bring an action to recover damages; venue for any civil action is in the plaintiff's county of residence, or where the alleged violations of the financial identity fraud statute occurred; and taking civil action does not depend on whether a criminal prosecution has been, or will be, instituted.

The act became effective on December 1, 2002, and applies to offenses committed on or after that date. (HP)

Crime to Defraud Drug Test

S.L. 2002-183 (SB 910) makes it a Class 1 misdemeanor to defraud drug and alcohol screening tests; a second or subsequent offense is a Class I felony. The act makes it unlawful to do any of the following:

- Sell, give away, distribute, or market urine in this State or transport urine into this State with the intent of using the urine to defraud a drug or alcohol-screening test.
- Attempt to defeat a drug or alcohol-screening test by substituting or spiking a urine sample or by advertising a sample substitution or other spiking device.
- Adulterate a urine or other bodily fluid sample with the intent to defraud a drug or alcohol-screening test.
- Possess adulterants that are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol-screening test.
- Sell adulterants with the intent that they be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol-screening test.

The act became effective December 1, 2002 and applies to offenses committed on or after that date. (BC)

Studies

New / Independent Studies / Commissions

House Select Study Committee on Video Gaming Machines

S.L. 2002-180, Part XIX (SB 98, Part XIX) creates the House Select Study Committee on Video Gaming Machines (Committee). The Speaker of the House of Representatives shall appoint 15 members to the Committee consisting of 11 members of the House of Representatives and 4 public members.

The Committee is charged with studying the following:

- Federal and State regulation of video gaming machines.
- The problems associated with the operation of video gaming machines in the State.
- The difficulties associated with the enforcement of video gaming laws.
- The most appropriate law enforcement agency to enforce the video gaming laws.
- The effect of court decisions on video gaming laws.
- The potential impact of a video gaming ban would have on the casino operations of the Eastern Band of the Cherokee Indians.
- The feasibility of levying a fee on video gaming machines and using the revenue to enforce current video gaming laws.

The Committee is to report its findings no later than the convening of the 2003 General Assembly.

This part became effective October 31, 2002. (SS)

Legislative Study Commission on Securities Fraud Enforcement Laws

S.L. 2002-180, Part XVI (SB 98, Part XVI). See **Commercial Law.**

Chapter 8
Education

Dee Atkinson (DA), Drupti Chauhan (DC), Shirley Iorio (SI),
Robin Johnson (RJ), Sara Kamprath (SK), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Public Schools

Care for School Children with Diabetes Act

S.L. 2002-103 (SB 911), as amended by S.L. 2002-159, Sec. 63 (SB 1217, Sec. 63), directs the State Board of Education (Board) to adopt and disseminate guidelines for implementing individual diabetes care plans. In developing these guidelines, the Board must consult with the North Carolina Diabetes Advisory Council and local school administrative unit employees who are coordinating local efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended. The Board must also refer to the guidelines recommended by the American Diabetes Association for the management of children with diabetes in school and daycare settings and must also consider the results of recent investigations into allegations of discrimination against students with diabetes conducted by the United States Department of Education's Office of Civil Rights.

The guidelines adopted by the Board must include (1) procedures for the development of individual diabetes care plans at the written request of the student's parent or guardian, (2) procedures for regular review of the plan, (3) the information that must be included in a plan, including responsibilities and appropriate staff development for teachers and other school personnel, allowable actions to be taken (such as meals and snacks), and the extent to which the child can participate in the management of the child's plan, and (4) the information and staff development to be made available to teachers and other school personnel.

The guidelines must be adopted by January 15, 2003, and implemented by the 2003-2004 school year. The Board shall report by September 1, 2003 to the Joint Legislative Education Oversight Committee on the progress in adopting and implementing the guidelines.

The act directs local boards of education to implement the guidelines in schools in which a child with diabetes is enrolled. Local boards shall provide the necessary information and staff development to enable teachers and other school personnel to assist students in accordance with their individual care plans.

S.L. 2002-103 became effective September 5, 2002. S.L. 2002-159, Sec. 63 became effective October 11, 2002. (SK)

Retirement/Tenure/Teacher Exchange Programs

S.L. 2002-110 (HB 1724) clarifies that a public school teacher who is a nonimmigrant alien participating in an exchange visitor program is not eligible for participation in the Teachers' and State Employees' Retirement System or Health Plan and is not eligible to obtain career status. These exchange teachers are, however, eligible for other employment benefits, such as sick leave, annual vacation leave, and personal leave, if they are employed for at least 20 hours per week and with the expectation of at least six full consecutive monthly pay periods of employment.

The act became effective September 6, 2002. (RJ)

Deduction Flexibility

S.L. 2002-126, Sec. 6.4 (SB 1115, Sec. 6.4). See **Employment**.

Procedure Before Reducing Appropriations to a School Administrative Unit

S.L. 2002-126, Sec. 6.7 (SB 1115, Sec. 6.7) modifies the procedure that a board of county commissioners must follow before reducing appropriations to a school administrative unit as part of a general reduction in county expenditures required because of prevailing economic conditions. The board must: 1) hold a public meeting to give the school board an opportunity to present information on the impact of the reduction and 2) take a public vote on the decision to reduce appropriations to a school administrative unit.

This section became effective September 30, 2002. (DC)

Conversion of Accumulated Leave Time

S.L. 2002-126, Sec. 7.11 (SB 1115, Sec. 7.11) amends G.S. 115C-302.1 by changing how teachers and other personnel paid on the teacher salary schedule may convert accumulated annual vacation leave days in excess of 30 days at the end of a school year and upon separation from service. This change eliminates the option for having these excess days converted to pay when the days were forfeited because the personnel were required to attend required workdays.

This section became effective September 30, 2002 and applies to leave days accruing after that date. (RJ)

Curriculum Review Required on a Regular Basis

S.L. 2002-126, Sec. 7.15 (SB 1115, Sec. 7.15) amends G.S. 115C-12(9a) by requiring the State Board of Education to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis instead of every five years.

This section became effective September 30, 2002. (SK)

Performance-Based Licensure Program/Suspension of Portfolio Requirement and Study

S.L. 2002-126, Sec. 7.18(a) (SB 1115, Sec. 7.18(a)) directs the State Board of Education, (Board) in consultation with the Board of Governors of The University of North Carolina and the Education Cabinet, to review teacher preparation programs and the continuing certification process to determine how these programs can be modified to enhance the continuing teacher certification process and to reduce the burden the continuing certification process places on newly certified teachers. This evaluation shall consider strategies for streamlining the current continuing certification process and reducing the amount of documentation required in the applicant's portfolio.

The Board must suspend the portfolio requirement for all teachers who are required, under the current law, to submit portfolios from August 1, 2002, through June 30, 2004. Teachers who are not required to submit portfolios during the period the portfolio requirement is suspended shall be subject to interim requirements adopted by the Board and shall complete the interim requirements. The Board shall make every effort to insure that any interim requirements do not require significant and unnecessary paperwork, effort, and administrative burden. Prior to

implementation of the interim requirements, the Board must report to the Joint Legislative Education Oversight Committee on the proposed requirements.

(See also **Studies**).

This section became effective September 30, 2002. (SI)

High School Exit Examination

S.L. 2002-126, Sec. 7.21 (SB 1115, Sec. 7.21) specifies that before the State Board of Education (Board) completes the development and implementation of the high school exit examinations, the Board shall review the requirements and regulations of the federal "No Child Left Behind Act of 2001" for compliance. The Board shall also consider whether any revisions need to be made to the State testing program and the School-Based Management and Accountability Program in order to comply with federal requirements. The Board shall adopt no revisions before the revisions and a proposed timetable for their implementation are reported to the Joint Legislative Education Oversight Committee.

(See also **Studies**).

This section became effective September 30, 2002. (DC)

Extend Alternative Lateral Entry Program

S.L. 2002-126, Sec. 7.24 (SB 1115, Sec. 7.24) amends Section 2 of S.L. 1998-226 by extending the expiration date of the alternative lateral entry program from September 1, 2002 to September 1, 2006.

This section became effective September 30, 2002 and remains effective for any teacher employed before September 1, 2006. (RJ)

Business and Education Technology Alliance

S.L. 2002-126, Sec. 7.27 (SB 1115, Sec. 7.27) creates the State Board of Education's (Board) 27-member Business and Education Technology Alliance (Alliance). The Alliance shall be composed of persons who have knowledge and interest in ensuring that the effective use of technology is built into the public schools in order to prepare a globally competitive workforce in the 21st century. The Alliance is directed to advise the Board on the development of:

- a vision for a technologically literate citizen in 2025;
- a technology infrastructure, delivery, and support system to provide equity and access to all citizens in the State;
- professional development programs for teachers to implement and use technology in public schools for all students; and
- a funding and accountability system to ensure statewide access and equity.

The Alliance shall make an annual report to the Board and the Joint Legislative Education Oversight Committee on the progress of implementing its recommendations for education technology in the public schools, including any changes to laws, rules or policy. The report to the Board is due on the first Friday in December and the report to the Joint Legislative Education Oversight Committee is due on the first Friday in January.

This section became effective September 30, 2002. (SK)

High Priority School Program Waiver

S.L. 2002-126, Sec. 7.28 (SB 1115, Sec. 7.28) amends S.L. 2001-424, Sec. 29.6(c) by providing that a local board of education may request a waiver from the State Superintendent of Public Instruction for the 2002-2003 school year if the local board determines that the local

school administrative unit is unable to implement the class-size limitation and other high priority initiatives for any high-priority school located in the unit. The Superintendent may grant a waiver for the 2002-2003 school year if the Superintendent finds that the school is making efforts comparable to those required for high-priority schools and that the educational progress of students in the school is satisfactory.

This section became effective September 30, 2002. (SI)

Notification of Field Testing

S.L. 2002-126, Sec. 7.30 (SB 1115, Sec. 7.30), as amended by S.L. 2002-159, Sec. 70 (SB 1217, Sec. 70), amends G.S. 115C-174.12 by requiring the State Board of Education to establish policies and guidelines to minimize the frequency of field testing at any one school. The policies must consider standard testing practices that insure the reliability and validity of the sample testing. This section also directs the Superintendent of Public Instruction to notify local boards of education by October 1 of each year of any field tests that will be administered in their schools during the school year, the schools at which the field tests will be administered, and the specific field tests that will be administered at each school.

This section becomes effective January 1, 2003. (DC)

Availability of Information on Employee Qualifications

S.L. 2002-126, Sec. 7.36 (SB 1115, Sec. 7.36) amends G.S. 115C-319 by clarifying that local boards of education may disclose certification and other information about school employees as required under the federal No Child Left Behind Act.

This section became effective September 30, 2002. (RJ)

Definition of Retired Teacher Modified

S.L. 2002-126, Sec. 7.38 (SB 1115, Sec. 7.38) amends the definition of "retired teacher" in G.S. 115C-325(a)(5a). A retired teacher, with career status before retirement, who returns to the classroom under certain conditions shall be evaluated for their performance according to the local board's policies and procedures that apply to career teachers.

This section became effective September 30, 2002. (SK)

Limit Certification Renewal for Retired Teachers

S.L. 2002-126, Sec. 7.39 (SB 1115, Sec. 7.39) amends G.S. 115C-296(b), which governs certification requirements. It specifies that the teacher certification program provides for certificate renewal every five years until the retirement of the teacher. The last certificate renewal received prior to retirement shall remain in effect for five years after retirement.

This section became effective September 30, 2002. (SI)

Certification of School Nurses

S.L. 2002-126, Sec. 7.41 (SB 1115, Sec. 7.41) amends G.S. 115C-315 by exempting school nurses employed in the public schools prior to July 1, 1998 from being required to be nationally certified in order to continue employment. These school nurses will continue to be paid based on the noncertified nurse salary range as established by the State Board of Education. The Joint Legislative Education Oversight Committee is also directed to study issues related to the qualifications of school nurses.

(See also **Studies**).

This section became effective September 30, 2002. (DC)

Sample Test to Validate K-2 Assessment

S.L. 2002-126, Sec. 7.44 (SB 1115, Sec. 7.44), as amended by S.L. 2002-159, Sec. 70.5 (SB 1217, Sec. 70.5), authorizes the Department of Public Instruction to administer a standardized reading test for a pilot study of the comparative predictive validity of the reading assessment currently used in kindergarten and grades one and two. The standardized test may be administered to students in schools that are eligible for federal Reading First Grants and only to the extent necessary to receive the funds. These test results may not be used for any other purpose.

This section, as amended, became effective October 11, 2002, and expires when the federal Reading First Grant expires or in the event the State is not awarded any funds under this Grant. (RJ)

Transfer North Carolina Council on the Holocaust to Department of Public Instruction

S.L. 2002-126, Sec. 10.10D (SB 1115, Sec. 10.10D) moves the North Carolina Council on the Holocaust from the Department of Health and Human Services to the Department of Public Instruction by a Type II transfer. This section also clarifies that Council members are appointed for two-year terms beginning July 1 of each odd-numbered year.

This section became effective October 1, 2002. (SK)

More At Four Program

S.L. 2002-126, Sec. 10.56 (SB 1115, Sec. 10.56). See **Children and Families**.

Special Annual Leave Bonus/Community College Salaries

S.L. 2002-126, Sec. 28.3A (SB 1115, Sec. 28.3A), as amended by S.L. 2002-159, Sec. 82 (SB 1217, Sec. 82). See **Employment**.

Retired Teachers Returning to the Classroom Without Loss of Retirement Benefits/Option Extended

S.L. 2002-126, Sec. 28.10 (SB 1115, Sec. 28.10). See **Employment**.

Modify Benefit Restrictions for Reemployed Retirees in the Teachers' and State Employees' Retirement System and in the Local Governmental Employees' Retirement System

S.L. 2002-126, Sec. 28.13 (SB 1115, Sec. 28.13). See **Employment**.

Parental Leave for Teachers and School Employees

S.L. 2002-159, Sec. 37.5 (SB 1217, Sec. 37.5) amends G.S. 115C-302.1(j) to allow teachers to use up to 30 days of sick leave for care of a child placed with the teacher for adoption. A new section, G.S. 115C-336.1, is added that allows school employees to use annual leave or leave without pay to care for a newborn child or for a child placed with the employee for adoption or foster care. A school employee may also use up to 30 days of sick leave to care for a child placed with the employee for adoption. The leave may be for consecutive workdays during the first 12 months after birth or placement of the child, unless the employee and the local board agree otherwise.

This section became effective October 11, 2002. (SK)

Moratorium on Charter School Funds

S.L. 2002-159, Sec. 91.1 (SB 1217, Sec. 91.1) provides that nothing in the General Statutes or any local act entitles any charter school in North Carolina to recover retroactively any funds from penalties, fines, and forfeitures or supplemental school taxes prior to July 1, 2003.

This section became effective October 11, 2002. (DC)

LEAs and Group Homes

S.L. 2002-164 (SB 163) makes the following changes related to group homes and children who are placed in those homes:

- Amends G.S. 115C-140.1(a), effective July 1, 2003, by shifting the responsibility for providing local education funds from that of the local school administrative unit where a group home, foster home, or similar facility is located to that of the local school administrative unit in which the student is domiciled. The funds that must be transferred are the amount equal to the actual local cost in excess of State and federal funds required to educate that child.
- Directs the State Board of Education, effective July 1, 2003, to provide for a local school administrative unit to request additional funds if a child assigned to that unit was not in that unit's April headcount for exceptional children for the previous school year, even if the local school administrative unit received funds for that child for a portion of the preceding school year.
- Amends G.S. 122C-23 and G.S. 131D-10.3 by prohibiting the Department of Health and Human Services (DHHS) from enrolling any new provider for Medicaid Home or Community Based services or other Medicaid Services and prohibits DHHS from licensing any new facility for the mentally ill, developmentally disabled, or substance abusers (facility) or any new service if the applicant (i) is the owner, principal, or affiliate (owner) of a facility that had its license revoked and 60 months has not elapsed since the date of revocation; (ii) is the owner of a facility that was assessed a penalty for certain violations that resulted in death or serious physical harm, resulted in substantial risk that death or serious physical harm would occur, or presented a direct relationship to the health, safety, or welfare of any client or patient and 60 months has not elapsed since the date of the violation; (iii) is the owner of a facility that had its license summarily suspended or downgraded to provisional status due to certain violations that resulted in death or serious physical harm, resulted in substantial risk that death or serious physical harm would occur, or presented a direct relationship to the health, safety, or welfare of any client or patient and 60 months has not elapsed since the date the license was reinstated or restored; or (iv) is the owner of a facility that provides foster care or residential care for children and that had its license summarily suspended or downgraded to

provisional status due to certain violations of laws governing these facilities and 60 months has not elapsed since the date the license was reinstated or restored.

- Amends G.S. 122C-111, effective July 1, 2002, by directing area authorities or county programs to monitor for compliance with the law the provision of mental health, developmental disabilities, and substance abuse services.
- Amends G.S. 122C-115.2(b) by requiring counties, through an area authority or county program, to include in their business plans for the management and delivery of mental health, developmental disabilities, and substance abuse services a description of how they plan to address the resources available or needed to prevent out-of-community placements and the inclusion of input from the community public agencies.
- Amends G.S. 143B-139.1 by authorizing the Secretary of DHHS to adopt and enforce rules governing the (i) placement of an individual in a facility located outside of the individual's community; (ii) ability of providers to return this individual to his or her community as soon as possible without detriment to the individual or the community; (iii) monitoring of mental health, developmental disabilities, and substance abuse services; (iv) communications procedures among the area authority or county program, local department of social services, local school system, and criminal justice agency (if involved with the individual) regarding the outside placement of the individual and the transfer of the individual's records; and (v) enrollment and revocation of enrollment of Medicaid providers previously sanctioned by DHHS.
- Amends G.S. 150B-21.1 by authorizing DHHS to adopt temporary rules governing the placement of individuals in licensed facilities for the mentally ill, developmentally disabled, or substance abusers.
- Amends G.S. 7B-505, G.S. 7B-903, G.S. 7B-2502, and G.S. 7B-2503 by directing the juvenile court to consider, when placing a juvenile in nonsecure custody or in out-of-home care, whether it is in the juvenile's best interest to remain in his or her county of residence.

(See also **Studies**).

Except as otherwise noted, the act became effective October 23, 2002. (RJ)

Address Confidentiality Program

S.L. 2002-171 (HB 1402). See **Children and Families**.

Facilitate Job Sharing by Teachers

S.L. 2002-174 (SB 1443) facilitates job sharing by classroom teachers who do not wish to work full time by requiring the State Board of Education to adopt rules providing holidays and leave benefits on a pro rata basis for job sharing positions. It also amends the definitions and creditable service sections of the Teachers' and State Employees' Retirement System to include classroom teachers in job sharing positions and provides that service rendered by a classroom teacher in a job sharing position shall be credited at the rate of one-half year for each regular school year of employment. The act amends the eligibility criteria of the Comprehensive Major Medical Plan to provide coverage for classroom teachers in job sharing positions on a partially contributory basis where the employing unit of these employees shall pay fifty percent of the Plan's total noncontributory premiums and the individual employees shall pay the balance of the total noncontributory premiums not paid by the employing unit. The act also directs the Legislative Research Commission to study various issues related to employee benefits for public school employees, community college employees and State employees in part-time and job-sharing positions.

(See also **Studies**).

The study section of the act became effective October 31, 2002. The remaining sections of the act become effective January 1, 2003. (DC)

Dropout Reduction/LEA Accountability

S.L. 2002-178 (SB 1275) makes various changes to the law relating to dropouts:

- G.S. 115C-12, governing the powers and duties of the State Board of Education (Board), is amended to direct the Board to develop a statewide plan that improves tracking of dropout data and enables accurate and useful comparisons of the data over time. The Board must report this plan to the Joint Legislative Education Oversight Committee by December 15, 2002.
- G.S. 115C-47, governing the powers and duties of local boards of education, is amended to encourage local school boards to adopt policies requiring superintendents to assign teachers with at least four years of experience and who have received an overall formal evaluation rating that is at least above standard within the last three years to teach the core academic subjects in 7th through 9th grade.
- G.S. 115C-105.38, governing assistance teams assigned to identified low-performing schools, requires the assistance team to report to the Board if a school and its local board of education are not responsive to the team's recommendations. If the Board confirms that the school and the local board have failed to take appropriate steps to improve student performance at the school, then the Board shall take over the powers and duties of that local board and school until student performance at the school meets or exceeds the standards set for the school.

The act also directs the Board to take specific actions relating to reducing the dropout rate:

- The Board must examine the high school accountability system created under the ABCs and make appropriate changes to the growth composite so that high schools are rewarded for reducing dropout rates and improving graduation rates.
- The Board must identify, in cooperation with the State Board of Community Colleges, technical high schools and career centers currently in operation in the State, make recommendations to strengthen concurrent enrollment opportunities between these technical high schools and career centers and the community colleges, and report their findings to the Joint Legislative Education Oversight Committee by December 15, 2002.
- The Board must adopt a policy requiring kindergarten through eighth grade teachers to take three renewal credits in reading methods courses during each five-year license renewal cycle.

(See also **Studies**).

The act became effective October 31, 2002. (SI)

Interpreter/Transliterator Licensure

S.L. 2002-182 (HB 1313). See **Health and Human Services**.

Higher Education

Transfer Collection Responsibilities for Certain Scholarship Programs to State Education Assistance Authority

S.L. 2002-126, Sec. 9.2 (SB 1115, Sec. 9.2) transfers the responsibility for collecting repayments for loans awarded by the Teaching Fellows Program and from the Scholarship Loan Fund for Prospective Teachers. The transfers are Type II transfers from the North Carolina Teaching Fellows Commission and the Department of Public Instruction, respectively, to the State Education Assistance Authority. The loan repayment must be outstanding for more than 30 days.

This section became effective September 30, 2002. (SK)

Funds for Need-Based Scholarships

S.L. 2002-126, Sec. 9.19 (SB 1115, Sec. 9.19) amends G.S. 116B-7 to include grants along with loans to aid worthy and needy students of North Carolina enrolled in public institutions of higher education in North Carolina. The provision further clarifies that these grants and loans are to be made upon terms consistent with Chapter 116B pursuant to which the State Education Assistance Authority makes grants and loans to other students under G.S. 116-201 to 116-209.23, Article 23 of Chapter 116 of the General Statutes, policies of the UNC Board of Governors regarding need-based grants for students of The University of North Carolina, and policies of the State Board of Community Colleges regarding need-based grants for students of the community colleges.

This section became effective September 30, 2002. (DC)

Scholarships for Children of War Veterans Amendments

S.L. 2002-126, Sec. 19.3 (SB 1115, Sec. 19.3) amends the definition of "child" in G.S. 165-20 by removing the requirement that the person be a senior in high school and graduating at the end of the academic year and adds the requirements that the person be under 25 years of age at the time of the application for a scholarship and has completed high school or its equivalent prior to the receipt of a scholarship awarded under Article 4 of Chapter 165.

This section also amends G.S. 165-21 by limiting the educational assistance afforded a child under Article 4 of Chapter 165 to an eight-year period beginning on the date the scholarship is first awarded. Those persons who were granted a scholarship under Article 4 of Chapter 165 prior to the effective date of the act are entitled to the remainder of their period of scholarship eligibility if it is now used prior to August 1, 2010 rather than August 1, 1999. G.S. 165-21 is further amended by removing language requiring that the scholarship be awarded pending the graduation of the child if the child is awarded a scholarship under the Article and the child is a senior in high school or its equivalent. When a child is now awarded a scholarship under the Article, the child must be notified by May 1st of the year in which the child enrolls in college.

This section amends G.S. 165-22 regarding the classes or categories of eligibility under which scholarships may be awarded to children of veterans. The amendment removes the requirement under Class II that the veteran parent is or was at the time of his death receiving wartime compensation for a statutory award for pulmonary tuberculosis as rated by the United States Department of Veterans Affairs and substitutes the requirement that the veteran parent was awarded a Purple Heart for wounds received as a result of an act of any opposing armed force, as a result of an international terrorist attack, or as a result of military operations while serving as a part of a peacekeeping force. The section deletes the requirement that the child be less than 23 years of age at the time of the application for the scholarship is deleted under Class III. In addition, the section expands eligibility under Class III, to include the children of veteran

parents who served in a combat zone, or waters adjacent to a combat zone, or any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal who do not fall within the provisions of another class described in G.S. 165-22(1), (2), (3), (4)a., or (5). G.S. 165-22.1(c) now authorizes the Secretary of the Department of Administration to establish the allowances for room and board in State educational institutions. This authority was formerly given to the Director of the Budget.

This section became effective September 30, 2002. (DC)

Community Colleges

Viticulture/Enology Course Authorization

S.L. 2002-102 (HB 190). See **Alcoholic Beverage Control**.

Regional Economic Development Vision Plans

S.L. 2002-126, Sec. 8.3 (SB 1115, Sec. 8.3) directs the State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the Department of Commerce, in conjunction with the North Carolina Board of Economic Development and the seven regional economic development commissions to adopt a joint policy that requires the development of a five-year vision plan for each of the economic development regions in the State. The joint policy shall establish a task force for each economic development region, and each of those task forces must develop a five-year vision plan for its economic development region. This provision sets out the make-up of the task forces and specifies the requirements for the work of the task forces.

This section became effective September 30, 2002. (SI)

Special Annual Leave Bonus/Community College Salaries

S.L. 2002-126, Sec. 28.3A (SB 1115, Sec. 28.3A), as amended by S.L. 2002-159, Sec. 82 (SB 1217, Sec. 82). See **Employment**.

Universities

Defining "Needy North Carolina Students"

S.L. 2002-69 (SB 1231) codifies in G.S. 116-19 the definitions of "needy North Carolina students" and "institutional methodology" that are currently used in the North Carolina State Education Assistance Authority regulations that govern the State Contractual Scholarship Fund. "Needy North Carolina students" are those eligible students who have financial need as determined by the institutional methodology or the federal methodology as defined by the State Education Assistance Authority. The act defines "institutional methodology" as a need-analysis formula, developed by the College Scholarship Service that determines the student's and family's capacity to pay for postsecondary education each year.

The act became effective August 12, 2002. (DC)

Exempt Arboretum From Umstead Act

S.L. 2002-109 (SB 1441). See **State Government**.

UNC Scholarship Programs Consolidated

S.L. 2002-126, Sec. 9.4 (SB 1115, Sec. 9.4) creates the "UNC Campus Scholarships", effective July 1, 2003, by combining all funds in the continuation budget for the following scholarship programs:

- Minority Presence Grants for undergraduate and doctoral, law, and veterinary medicine students.
- Minority Presence Grants-II.
- Incentive Scholarship Program for Native Americans.
- Elizabeth City State University Incentive Program.
- Incentive Grants for Certain Constituent Institutions.
- Freshman Scholars Programs.
- Legislative College Opportunity Program.

All obligations to students of the funds set out above that were made prior to July 1, 2003 must be fulfilled for the students who remain eligible under the provisions of the respective programs. The State Education Assistance Authority shall administer the UNC Campus Scholarships.

Funds in the UNC Campus Scholarships must be distributed among the constituent institutions of The University of North Carolina in the same amounts as distributed prior to the effective date of the act. There is one exception to this distribution of funds. Funds in the UNC Campus Scholarships allocated for doctoral study must be allocated based on the proportion of doctoral students enrolled at each of the campuses that have doctoral students. These funds shall continue to be committed only to doctoral students who are North Carolina residents and shall be allocated based on need. The funds previously held in the Incentive Scholarship Program for Native Americans at the doctoral level shall be distributed evenly among the campuses with doctoral programs.

The Board of Trustees of each constituent institution must define its particular campus goals and guidelines for the use of the UNC Campus Scholarships for undergraduates. Only residents of North Carolina are eligible to receive grants from the UNC Campus Scholarships. The campus must use at least the portion of these funds that previously provided Minority Presence Grants for undergraduates to promote diversity within the undergraduate student body of the campus to the extent permitted by the constitution and laws of North Carolina and of the United States unless a campus has determined that it has sufficient diversity in its undergraduate student population to provide the educational benefits of diversity. No constituent institution is required to have a community service requirement for receipt of grants from the UNC Scholarships.

Each constituent institution must maintain the current proportion of allocation of these funds for undergraduate Native American students. The North Carolina State Education Assistance Authority may redistribute to another constituent institution funds for Native Americans which are uncommitted by January 5 of each fiscal year.

This section will become effective July 1, 2003. (SI)

Aid to Private Colleges Technical Corrections

S.L. 2002-126, Sec. 9.6 (SB 1115, Sec. 9.6) makes a technical correction to G.S. 116-21.4(a) and states that expenditures made pursuant to certain sections of the General Statutes may be used only for secular purposes at nonprofit institutions of higher learning that meet the qualifications set out in G.S. 116-22.

This section became effective September 30, 2002. (DC)

Out-of-State Institutions with NC Campuses

S.L. 2002-126, Sec. 9.11 (SB 1115, Sec. 9.11), as amended by S.L. 2002-159, Sec. 38 (SB 1217, Sec. 38), amends the definition of "institution" as it is used in G.S. 116-19 to 116-22. The change will allow North Carolina students who are enrolled in and attending certain accredited private institutions of higher education to be eligible for State-funded financial aid through the Legislative Tuition Grant Program and the State Contractual Scholarship Fund. The institution must be a nonprofit, must award post-secondary degrees, and must own a main permanent campus located in the State that provides permanent on-premises housing, food services, and classrooms with full-time faculty members.

S.L. 2002-126, Sec. 9.11 became effective September 30, 2002. S.L. 2002-159, Sec. 38 became effective October 11, 2002. (RJ)

North Carolina School of Science and Mathematics

S.L. 2002-126, Sec. 9.12(c) (SB 1115, Sec. 9.12(c)) amends the powers and duties of the Board of Trustees of the School of Science and Mathematics to prohibit the trustees from imposing any fee, other than a traffic, parking or motor vehicle fee, without the approval of the General Assembly.

This section became effective September 30, 2002. (SK)

UNC Institutions/Golf Course and Transient Accommodations Facility/Umstead Act Exemption Reporting Requirement

S.L. 2002-126, Sec. 9.15 (SB 1115, Sec. 9.15) amending G.S. 66-58 governing the sale of merchandise or services by governmental units, provides that The University of North Carolina, its constituent institutions, the Centennial Campus of North Carolina State University, the Horace Williams Campus of The University of North Carolina at Chapel Hill, a Millennial Campus of a constituent institution of The University of North Carolina, or any corporation or legal entity created or directly controlled by and using land owned by The University of North Carolina must consult with and provide the following information to the Joint Legislative Commission on Governmental Operations before issuing debt or executing a contract for a golf course or for any transient accommodations facility, including a hotel or motel:

- Architectural concepts.
- Financial and debt service projections.
- Business plans.
- Operating plans.
- Feasibility studies and consultant reports.

The act does not apply if the golf course or transient accommodations facility is owned, operated, or leased by The University of North Carolina or one of its constituent institutions on or before July 1, 2002.

This section became effective September 30, 2002. (SI)

Studies

Legislative Research Commission

Studies Act of 2002

S.L. 2002-180, Sec. 2.1(1) (SB 98, Sec. 2.1(1)) authorizes the Legislative Research Commission to study the following education issue:

- Bringing charter schools under the Tort Claims Act for school bus accidents. (RJ)

Job Sharing

S.L. 2002-174, Sec. 5 (SB 1443, Sec. 5) directs the Legislative Research Commission to study employee benefits for public school employees, community college employees, and employees of State departments and institutions, in part-time and in job-sharing positions.

This section became effective October 31, 2002.

Referrals to Existing Commissions/Committees

Joint Legislative Education Oversight Committee Studies

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

- Funds for Instructional Supplies. S.L. 2002-126, Sec. 7.9(b) (SB 1115, Sec. 7.9(b)).
- Teacher Certification Changes Proposed by State Board of Education. S.L. 2002-7.18(e) (SB 1115, Sec. 7.18(e)).
- Duties of School Counselors. S.L. 2002-126, Sec. 7.37 (SB 1115, Sec. 7.37).
- Qualifications of School Nurses. S.L. 2002-126, Sec. 7.41(b) (SB 1115, Sec. 7.41(b)).
- Organization and Structure of the Community College System. S.L. 2002-126, Sec. 8.7(a) (SB 1115, Sec. 8.7(a)).
- North Carolina School of Science and Mathematics. S.L. 2002-126, Sec. 9.12(a) (SB 1115, Sec. 9.12(a)).
- Raising the Compulsory Attendance Age. S.L. 2002-178, Sec. 4 (SB 1275, Sec. 4).
- Fiscal and Instructional Accountability of Local School Administrative Units. S.L. 2002-178, Sec. 6 (SB 1275, Sec. 6).

The JLEOC is reauthorized to study the following issues:

- Salaries of School Food Service Workers and Custodians. S.L. 2002-126, Sec. 7.17(d) (SB 1115, Sec. 7.17(d)) amends Sec. 28.34 of S.L. 2001-424.
- Salary Differentials for Instructional Support Personnel. S.L. 2002-126, Sec. 7.17(e) (SB 1115, Sec. 7.17(e)) amends Sec. 28.37(b) of S.L. 2001-424.
- State's Testing Program. S.L. 2002-126, Sec. 7.17(f) (SB 1115, Sec. 7.17(f)) amends Sec. 28.17(i) of S.L. 2001-424.
- Professional Development for School Personnel. S.L. 2002-126, Sec. 7.17(h) (SB 1115, Sec. 7.17(h)) amends Sec. 31.4(d) of S.L. 2001-424.

The JLEOC may study the following issues:

- Recruitment and Retention of Teaching Personnel. S.L. 2002-180, Sec. 8.2 (SB 98, Sec. 8.2).
- Local Flexibility for School Systems. S.L. 2002-180, Sec. 8.3 (SB 98, Sec. 8.3).

- Vocational Education Tests. S.L. 2002-126, Sec. 7.33 (SB 1115, Sec. 7.33).
- Community College System Funding. S.L. 2002-126, Sec. 8.7(b) (SB 1115, Sec. 8.7(b)). (RJ)

Referrals to Departments, Agencies, Etc.

State Board of Education

The State Board of Education shall study the following issues:

- Performance-Based Licensure Program/Suspension of Portfolio Requirement and Study. S.L. 2002-126, Sec. 7.18(b)-(e) (SB 1115, Sec. 7.18(b)-(e)).
- Coordination of Central Office Duties. S.L. 2002-126, Sec. 7.19 (SB 1115, Sec. 7.19).
- High School Exit Examination. S.L. 2002-126, Sec. 7.21 (SB 1115, Sec. 7.21).
- Relationship Between Academic Rigor and Reducing the School Dropout Rate. S.L. 2002-178, Sec. 2(c) (SB 1275, Sec. 2(c)).

The State Board of Education is reauthorized to study the following issues:

- Supplemental Funding in Low-Wealth Counties. S.L. 2002-126, Sec. 7.17(a) (SB 1115, Sec. 7.17(a)) amends Sec. 28.6(i) of S.L. 2001-424.
- Small School System Supplemental Funding. S.L. 2002-126, Sec. 7.17(b) (SB 1115, Sec. 7.17(b)) amends Sec. 28.7(e) of S.L. 2001-424.
- Textbook Distribution System. S.L. 2002-126, Sec. 7.17(c) (SB 1115, Sec. 7.17(c)) amends Sec. 28.24 of S.L. 2001-424. (RJ)

Business and Education Technology Alliance

S.L. 2002-126, Sec. 7.27 (SB 1115, Sec. 7.27) establishes the Business and Education Technology Alliance for the purpose of studying and advising the State Board of Education on issues related to technology in the public schools. (RJ)

Office of State Budget and Management

S.L. 2002-126, Sec. 7.13 (SB 1115, Sec. 7.13) requires the Office of State Budget and Management to issue a Request for Proposals for an analysis of the structure and operation of the Department of Public Instruction that identifies potential efficiencies and savings in the operation of the Department. The analysis may consider consolidation of functions with other agencies and automation of functions. (RJ)

Community Colleges

The State Board of Community Colleges shall study the following issues:

- Regional Program Offerings. S.L. 2002-126, Sec. 8.2 (SB 1115, Sec. 8.2).
- Haywood Regional High Technology Center. S.L. 2002-126, Sec. 8.4(b) (SB 1115, Sec. 8.4(b)). (RJ)

UNC Board of Governors

The Board of Governors of The University of North Carolina shall study the following issues:

- Focused Growth Pilot Program. S.L. 2002-126, Sec. 9.9 (SB 1115, Sec. 9.9).

- Activities Under Umstead Act Exemptions. S.L. 2002-126, Sec. 9.10A (SB 1115, Sec. 9.10A).
- University Fiscal Liabilities. S.L. 2002-126, Sec. 9.16 (SB 1115, Sec. 9.16).
- Reading Methods Courses in Teacher Education Programs. S.L. 2002-178, Sec. 5(b) (SB 1275, Sec. 5(b)). (RJ)

The University of North Carolina at Chapel Hill

S.L. 2002-126, Sec. 9.13 (SB 1115, Sec. 9.13) directs The University of North Carolina at Chapel Hill not to close the Horace Williams Airport before January 1, 2005. Prior to moving Medical Air, Inc., from the Horace Williams Airport, the Chancellor of The University of North Carolina at Chapel Hill shall consult with the Joint Legislative Commission on Governmental Operations regarding the feasibility, cost, and impact on the effectiveness of area health education centers' services to the public that will result from the proposed move.

This section became effective July 1, 2002. (RJ)

The Kenan-Flagler Business School

S.L. 2002-126, Sec. 13.9 (SB 1115, Sec. 13.9), as amended by S.L. 2002-159, Sec. 76(b) (SB 1217, Sec. 76(b)). See **State Government**.

DHHS Office of Education Services

S.L. 2002-126, Sec. 10.44 (SB 1115, Sec. 10.44) directs the Office of Education Services to report not later than December 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 on the activities of the Eastern North Carolina School for the Deaf at Wilson, the North Carolina School for the Deaf at Morganton, and the Governor Morehead School for the Blind. The report shall include enrollment numbers at the schools, the budgets, and the academic status of the schools as defined under the ABC's program.

This section became effective July 1, 2002. (RJ)

School-Sponsored Bus Transportation Safety Study

S.L. 2002-126, Sec. 26.11 (SB 1115, Sec. 26.11). See **Transportation**.

DHHS/Department of Juvenile Justice and Delinquency Prevention/Department of Public Instruction/Other Affected Agencies

S.L. 2002-164, Sec. 1 (SB 163, Sec. 1) directs the Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction (DPI), and other affected agencies, to report on a method of identifying and tracking children placed outside of the family unit in groups homes or therapeutic foster care home settings.

This section becomes effective January 1, 2003. (RJ)

Department of Health and Human Services

S.L. 2002-164, Sec. 4.11 (SB 163, Sec. 4.11) directs the Department of Health and Human Services (DHHS) to report on information that will be included in counties' business plans for the management and delivery of mental health, developmental, and substance abuse services. DHHS shall report by June 1, 2003, to the Joint Legislative Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Senate and House Appropriations Subcommittees on Health and Human Services.

This section became effective October 23, 2002. (RJ)

Chapter 9
Employment

Karen Cochrane-Brown (KCB),
Theresa Matula (TM), Hal Pell (HP), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

General Employment

Extend Unemployment Benefits

S.L. 2002-143 (HB 1040) amends several statutory provisions relating to Temporary Extended Unemployment Compensation (TEUC). The amendments allow the State to qualify for supplemental TEUC benefits. Under previous law, the necessary financial indicators were not triggered "on" to allow for federal funding of TEUC benefits, although the State had had over 50,000 workers exhaust their regular and State-funded TEUC benefits. The new provision, which modifies the "on" trigger, will result in 100% federal funding of an additional 13 weeks of TEUC benefits. After the termination of entirely federally funded benefits, the State must continue paying 50% of TEUC benefits until the statutory "off" trigger is met.

The act became effective on October 4, 2002. (HP)

Governmental Employment

Special Annual Leave Bonus/Community College Salaries

S.L. 2002-126, Sec. 28.3A (SB 1115, Sec. 28.3A) as amended by S.L. 2002-159, Sec. 82 (SB 1217, Sec. 82) provides that any person who is a full-time permanent employee on September 30, 2002, of

(i) a local board of education, or

(ii) the State,

and who is eligible for annual leave, shall have a one-time additional ten days of annual leave credited on that date. That leave shall be accounted for separately, and shall remain available until used, notwithstanding any other limitation on the total number of days of annual leave that may be carried forward. Part-time permanent employees and nine- or ten-month employees shall receive a pro rata amount of the ten days.

Local board of education employees paid on salary schedules in Section 7.1 or 7.2 of S.L. 2002-126 are not eligible to receive this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year.

Employees paid under Section 7.45 of S.L. 2002-126 shall not be eligible for this additional annual leave unless they are at the top of their respective salary schedules and do not receive a salary increment for the 2002-2003 fiscal year.

This section also encourages the State Board of Community Colleges to adopt rules authorizing the colleges to provide special annual leave bonuses, compensation bonuses, or other employee benefits to their employees.

S.L. 2002-126, Sec. 28.3A became effective July 1, 2002. S.L. 2002-159, Sec. 82 became effective October 11, 2002. (TM)

Additional Family and Medical Leave

S.L. 2002-126, Sec. 28.3B (SB 1115, Sec. 28.3B) allows a State employee to take up to 52 weeks of leave without pay during a five-year period in order to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition. For State employees subject to the State Personnel Act, this leave shall be administered under the Family and Medical Leave procedures of the State Personnel Commission. Benefits under this section for employees not subject to the State Personnel Act shall be administered under the Family and Medical Leave procedures applicable to those employees.

This section became effective July 1, 2002. (TM)

DHHS Exempt Policymaking Positions

S.L. 2002-126, Sec. 28.4 (SB 1115, Sec. 28.4) amends G.S. 126-5(d)(1) to allow the Governor to increase the designation of exempt policymaking positions at the Department of Health and Human Services by five. However, the total number of exempt policymaking positions shall not exceed 105.

This section became effective July 1, 2002. (TM)

Public Employee Special Pay Plan

S.L. 2002-126, Sec. 28.6 (SB 1115, Sec. 28.6) adds a new Part to Article 9 of Chapter 143B of the General Statutes. This section specifies that the Governor shall, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Special Pay Plan. The Board of Trustees will be constituted as an agency of the State of North Carolina within the Department of Administration. The Board would be required to adopt and implement an Internal Review Service approved Special Pay Plan for State employees to enhance existing Special Pay benefits. This section specifies that a Special Pay Plan is a qualified retirement plan under section 401(a) of the Internal Revenue Code that reduces the federal tax burden on special compensation payments made on behalf of State employees. The Plan shall be limited to employees age 55 or older who's Special Pay totals $5,000 or more per year. The Special Pay Plan shall:

- Require permanent savings for all participating State employees of no less than the lesser of 7.65% or the FICA percentage applicable to all Special Pay subject to the Plan;
- Guarantee payment, for State employees who elect and are entitled to immediate distribution from the Plan, the entire amount of Special Pay, plus earnings, and less any mandatory income tax withholding in no more than seven days from the date payment is made to the Plan on behalf of the State employee; and
- Phase in participation in the Special Pay Plan by State agencies as directed by the Board.

This section also amends the definition of compensation in G.S. 135-1(7a) to include all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee.

This section became effective July 1, 2002. (TM)

Employee Health Plan Trustees

S.L. 2002-126, Sec. 28.16 (SB 1115, Sec. 28.16) amends G.S. 135-39 to make changes to the composition of the State Employees' Health Plan Board of Trustees. Under the amended statute, the Governor's three appointments to the Plan's Board of Trustees must be either an employee of a state department, agency, or institution, an employed teacher of a public school

system, a retired employee of a state department, agency, or institution, or a retired teacher of a public school system. This section eliminated designations for appointments to the Plan's Board of Trustees by the General Assembly upon recommendation of the Speaker of the House and President Pro Tempore of the Senate. Also eliminated is the Plan's prior prohibition of anyone who receives benefits from the Plan or provides services, equipment, or supplies to the Plan from being a Trustee.

This section became effective July 1, 2002 and applies to appointments and reappointments made on and after October 1, 2002. (LA)

State Employee Health Plan Coverage for Services of Clinical Pharmacist Practitioners

S.L. 2002-126, Sec. 28.17 (SB 1115, Sec. 28.17) amends G.S. 135-40.6 to add to the list of covered services the services of clinical pharmacist practitioners who are approved by the North Carolina Board of Pharmacy and North Carolina Medical Board. These pharmacists have advanced training and work collaboratively with licensed physicians to implement pre-determined agreements for drug therapy, including dosing, pain management, refill programs, and disease management programs for chronic diseases such as asthma and diabetes.

This section became effective July 1, 2002. (LA)

RIF'd Employees Positions Ultimately Funded

S.L. 2002-159, Sec. 87 (SB 1217, Sec. 87) provides that any employee subject to a reduction in force under Executive Order Number 22 whose position was ultimately funded in S.L. 2002-126 shall maintain the employee's career State employee status as provided in G.S. 126-1.1. Employees may also purchase vacation leave up to the amount that they had accrued, not to exceed 240 hours, prior to the date of their separation. Employees who had accrued in excess of 240 hours of annual leave shall have that balance reinstated. These employees shall also receive the "Special Annual Leave Bonus" as specified in Section 28.3A of S.L. 2002-126.

This section became effective October 11, 2002. (TM)

Governmental Employment – Retirement

Retirement System Conforming Changes

S.L. 2002-71 (SB 1429) amends the laws governing the Legislative Retirement System, the Local Governmental Employees' Retirement System, the Teachers' and State Employees' Retirement System, and the Consolidated Judicial Retirement System to conform to provisions of the federal Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). In 2001, Congress enacted EGTRRA, which included a broad array of changes in the tax laws governing qualified pension plans. These changes were intended to improve and simplify the ability of Americans to save for retirement. The act conforms the laws governing each of the four major State retirement systems to allow the purchase of service credit through the rollover of contributions made to a 403(b) annuity contract, a 457(b) plan, an IRA, or another qualified pension plan. The act also authorizes the purchase of service credit through a direct plan-to-plan transfer from a 403(b) or 457(b) plan or from one of the Supplemental Retirement Income Plans. The act also makes several changes to contribution and benefit limits. Effective January 1, 2002, rollovers are permitted to be made with after-tax contributions to qualified plans or IRAs. However, the plan must be set up to provide separate accounting for such contributions and the

earnings on after-tax contributions. A surviving spouse or former spouse is now allowed to rollover distributions to his or her own plan.

The portions of the act affecting the purchase of service credit through rollovers and plan-to-plan transfers become effective January 1, 2003; except that the provisions relating to plan-to-plan transfers from one of the Supplemental Retirement Income Plans could become effective earlier if the Department of State Treasurer receives a ruling from the IRS approving the direct transfers. The remainder of the act became effective August 13, 2002. (KCB)

Retirement/Tenure/Teacher Exchange Programs

S.L. 2002-110 (HB 1724). See **Education.**

Deduction Flexibility

S.L. 2002-126, Sec. 6.4 (SB 1115, Sec. 6.4) amends G.S. 143-3 regarding payroll deductions for payments to certain employees' associations to provide that in addition to an employee of the State who may authorize a payroll deduction to a domiciled employees' association that has at least 2,000 members, an employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.

Additionally, the following statutory citations were created or amended:

- G.S. 128-38.3 (Local Governmental Employees' Retirement System)
- G.S. 135-18.8 (Teachers' and State Employees' Retirement System)
- G.S. 120-4.32 (Legislative Retirement System)
- G.S. 135-75 (Consolidated Judicial Retirement System)
- G.S. 58-86-91 (Firemen's and Rescue Squad Workers' Pension Fund)
- G.S. 127A-40 (h1) (National Guard Pension Fund)

to provide that any beneficiary (member for G.S. 58-86-91, and member or former member for G.S. 127A-40) who is a 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 the State or public school employees, may authorize, in writing the periodic deduction from the beneficiary's (or member's) retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The provisions specify that a plan of deductions pursuant to the sections shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

This section became effective July 1, 2002. (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. 2002-126, Sec. 28.8 (SB 1115, Sec. 28.8) provides a 1.4% increase in the retirement allowances paid to beneficiaries of each of four major State retirement systems. For beneficiaries of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, and the Consolidated Judicial Retirement System the increase applies to those whose retirement began on or before July 1, 2001. In addition, beneficiaries who retired after July 1, 2001 and before June 30, 2002, are authorized to receive an increase equal to a

prorated amount of the 1.4% increase provided to those who retired on or before July 1, 2001. For beneficiaries of the Legislative Retirement System the increase applies to those whose retirement began on or before January 1, 2002, and those who retired after January 1, 2002 but before June 30, 2002, will receive a prorated amount of the 1.4% increase. The Retirement System's Board of Trustees will determine the prorated amount based on the number of months that a retirement allowance was paid during 2001-2002.

This section became effective July 1, 2002. (KCB)

Enhance Benefits Payable From the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System

S.L. 2002-126, Sec. 28.9 (SB 1115, Sec. 28.9) increases the defined benefit accrual rate for members of the Teachers' and State Employees' Retirement System and members of the Local Governmental Employees' Retirement System from 1.81% to 1.82% of the member's average final compensation. This provision applies to members who retire on or after July 1, 2002. These members will receive a benefit equal to 1.82% 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.

This section became effective July 1, 2002. (KCB)

Retired Teachers Returning to the Classroom Without Loss of Retirement Benefits/Option Extended

S.L. 2002-126, Sec. 28.10 (SB 1115, Sec. 28.10) extends until June 30, 2004 (previously June 30, 2003) the provisions allowing a beneficiary of the Teachers' and State Employees' Retirement System who has been retired at least six months and has not been employed in any capacity, except as a substitute teacher or a part-time tutor, with a public school for at least six months immediately preceding the effective date of reemployment, to return to be employed to teach on a substitute, interim or permanent basis in a public school and not be subject to the retirement earnings cap. Additionally, this section requires the State Treasurer to seek a ruling from the IRS to determine whether the provisions for time in G.S. 135-3(8)c could be amended from six months to two months without adverse affect on the tax qualification of the Teachers' and State Employees' Retirement System.

This section became effective July 1, 2002. (TM)

Conform Treatment of Retired Legislative Employees who Return to Employment in a Full-Time Permanent Position with that of Other State Employees

S.L. 2002-126, Sec. 28.12 (SB 1115, Sec. 28.12) requires a retiree of the Teachers' and State Employees' Retirement System who is reemployed with the General Assembly on a full-time permanent basis to become a contributing member of the retirement system. In addition, the retirement allowance will be suspended. The act conforms the treatment of retirees reemployed with the General Assembly as a full-time permanent employee to those reemployed with other State agencies and departments.

This section became effective September 30, 2002. (KCB)

Modify Benefit Restrictions for Reemployed Retirees in the Teachers' and State Employees' Retirement System and in the Local Governmental Employees' Retirement System

S.L. 2002-126, Sec. 28.13 (SB 1115, Sec. 28.13) amends the law governing the earnings test that limits the amount of income a retiree is allowed to earn before retirement benefits are suspended for the remainder of the calendar year. The act allows a retiree to be reemployed with a state employer participating in the Retirement System and earn 50% of the salary earned during the 12 months of service prior to retirement or $23,600 whichever is greater, even when the 12 month period included crosses two calendar years. This provision does not apply to any employee who retired on or before September 1, 2002, and had an employment contract with a participating employee for the 2002-2003 fiscal year. This section also directs the State Treasurer to seek a private letter ruling from the Internal Revenue Service relating to what constitutes a "bona fide termination of employment" and the period of time that a member of the Retirement System must be separated from service before they can be reemployed while continuing to receive retirement benefits.

This section became effective July 1, 2002. (KCB)

Expand Separation Allowance for Law Enforcement Officers

S.L. 2002-126, Sec. 28.14 (SB 1115, Sec. 28.14) allows any retired law enforcement officer who returns to employment in a position that is exempt from the State Personnel Act in any agency other than the one that the officer retired from to continue to receive benefits from the Special Separation Allowance.

This section became effective July 1, 2002. (KCB)

Withdrawn Retirement Service

S.L. 2002-153 (SB 1238) amends G.S. 128-26 to allow the purchase of withdrawn service in the Local Governmental Employees' Retirement System upon completion of five years (*previously ten years*) of prior and current membership service. Upon completion of five years of prior and current membership service, the member may repay in a total lump sum all accumulated contributions previously withdrawn with 6.5% interest compounded annually for each calendar year from the year of withdrawal to the year of repayment plus a fee. This amended provision applies equally to retired members who had attained five years (*previously ten years*) of prior and current membership service prior to retirement. The increase in the retirement allowance will be adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment, but will not include any adjustment for cost-of-living increases granted since retirement. (*The increase in the retirement allowance is the difference between the initial retirement allowance and the amount of the retirement allowance to which the retired member would have been entitled had the service not been previously forfeited.)*

Additionally, G.S. 135-4(k) is amended to clarify that for retired members of the Teachers' and State Employees' Retirement System (TSERS) who repay withdrawn contributions, the retirement allowance shall be increased the month following the month payment is received (*previously, increased the month following receipt of payment*). It further clarifies that the increase in the retirement allowance will be adjusted by any increases in the retirement accrual rate occurring between the member's date of retirement and the date of payment, but will not include any adjustment for cost-of-living increases granted since retirement.

Section 4.1 of S.L. 2002-153, as amended by S.L. 2002-159, Sec. 83 (SB 1217, Sec. 83), authorizes the Treasurer to increase the requirements and receipts for the operating budget of

the Retirement Systems Division in the amount of $247,713 for the fiscal year 2002-2003 and fiscal year 2003-2004 to fund eight two-year time-limited positions.

The authorization to increase the requirements and receipts for the time-limited positions became effective November 1, 2002 and the remainder of the act becomes effective January 1, 2003. (TM)

Firemen's and Rescue Squad Workers' Pension Fund

Fire and Rescue Amendment

S.L. 2002-113 (SB 1232) amends G.S. 58-86-55 to permit members with at least ten years of service in the North Carolina Firemen's and Rescue Squad Workers' Pension Fund to continue making monthly contributions in the event that a volunteer department is taken over by a city or county.

The act also amends G.S. 95-25.14 regarding the minimum wage and overtime provisions as they relate to bona fide volunteer firefighters, and bona fide volunteer rescue and emergency medical services personnel, in an incorporated, nonprofit volunteer or community fire department or rescue squad.

The act became effective on September 6, 2002. The provision amending G.S. 58-86-55 applies to members of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund with at least ten years of service on or after January 1, 2002, the provision amending G.S. 95-25.14 applies to hours worked on or after July 31, 2002. (TM)

Increase Fire and Rescue Pension Benefits

S.L. 2002-126, Sec. 28.7 (SB 1115, Sec. 28.7) amends G.S. 58-86-55 to increase the monthly retirement pension payable to an eligible fireman or eligible rescue squad worker to $156.00 per month.

This section became effective July 1, 2002. (TM)

Studies

Legislative Research Commission

Employer Benefits, Including Retirement, Early Retirement, Disability Benefits

S.L. 2002-180, Sec. 2.1(4)a (SB 98, Sec. 2.1(4)a) provides that the Legislative Research Commission may study employer benefits, including retirement, early retirement, and disability benefits.

The Commission may report its findings, together with any recommended legislation to the 2003 General Assembly.

This section became effective October 31, 2002. (TM)

Study State Personnel System Statutes

S.L. 2002-180, Sec. 2.1B (SB 98, Sec. 2.1B) provides that the Legislative Research Commission may study Chapter 126 of the General Statutes, particularly the provisions relating to

benefit enhancements, career status, exemptions, compensation, demonstration projects, and employee relations, to determine whether changes can be made to simplify and streamline the law to enable the State Personnel Commission to adopt policy and rules more effectively and efficiently.

The Commission may report its findings, together with any recommended legislation to the 2003 General Assembly.

This section became effective October 31, 2002. (TM)

New Independent Studies/Commissions

Legislative Study Commission on the Teachers' and State Employees' Retirement System

S.L. 2002-180, Part XII (SB 98, Part XII) establishes a Legislative Study Commission on the Teachers' and State Employees' Retirement System (Commission). The Commission shall study the Teachers' and State Employees' Retirement System including establishing early retirement for State employees, the accumulation of vacation benefits as it relates to those who work eight-hour shifts and those who work 12-hour shifts, and other issues relating to solvency, benefits, or the financial health of the retirement system. The Commission shall consist of seven members appointed by the President Pro Tempore of the Senate; the Speaker of the House of Representatives; the President of the State Employees Association of North Carolina; the State Treasurer, or the Treasurer's designee, and the President of the North Carolina Association of Educators. The Commission may employ an outside consultant with expertise in the area of public sector retirement to assist in its work.

The Commission shall submit a final written report of its findings and recommendation on or before the convening of the 2003 General Assembly.

This part became effective October 31, 2002. (TM)

State Disability Income Plan Study Commission

S.L. 2002-180, Part XIV (SB 98, Part XIV) establishes the State Disability Income Plan Study Commission (Commission). The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes to determine what changes, if any, should be made to the Plan. The Commission shall consider what changes could be made to the Plan that would enhance the efficiency of and reduce the cost of the Plan to the State and its employees. The Commission shall consist of seven members appointed by the President Pro Tempore of the Senate; the Speaker of the House of Representatives; the State Treasurer, or the Treasurer's designee; the Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan; and the President of the North Carolina Association of Educators, or the President's designee. The Commission shall employ an actuary with expertise in the area of disability income insurance to assist the Commission in its work.

The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly no later than December 31, 2003.

The act became effective October 31, 2002. (TM)

Referrals to Existing Commissions/Committees

General Assembly Temporary Employees

S.L. 2002-126, Sec. 28.6A (SB 1115, Sec. 28.6A) requires the Legislative Services Commission to review the General Assembly's utilization of temporary employees. The Commission shall complete the review by March 1, 2003, and make any appropriate policy changes or initiate necessary legislative proposals by June 30, 2003.

This section became effective July 1, 2002. (TM)

Chapter 10
Environment and Natural Resources

George Givens (GG), Jeff Hudson (JH), Tim Dodge (TD), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Air Quality

Improve Air Quality/Electric Utilities

Emissions Limitations

S.L. 2002-4 (SB 1078) establishes annual limits on the collective emissions of oxides of nitrogen (NO_X) and sulfur dioxide (SO_2) from coal-fired generating units that are located in North Carolina, have an individual generation capacity of 25 or more megawatts of electricity, and are owned or operated by investor-owned public utilities. The following tables outline the annual limits on the collective emissions that will be required of the coal-fired generating units owned and operated by the two investor-owned public utilities subject to the emissions limitations, Duke Energy and Progress Energy.

Duke Energy

Pollutant	2000 Emissions	2007 Emissions	2009 Emissions	2013 Emissions
Oxides of Nitrogen (NO_X)	More than 75,000 tons	No more than 35,000 tons	No more than 31,000 tons	No more than 31,000 tons
Sulfur Dioxide (SO_2)	More than 225,000 tons	Not Specified	No more than 150,000 tons	No more than 80,000 tons

Progress Energy

Pollutant	2000 Emissions	2007 Emissions	2009 Emissions	2013 Emissions
Oxides of Nitrogen (NO_X)	75,000 tons or less	No more than 25,000 tons	No more than 25,000 tons	No more than 25,000 tons
Sulfur Dioxide (SO_2)	225,000 tons or less	Not specified	No more than 100,000 tons	No more than 50,000 tons

The act also provides that:

- Duke Energy and Progress Energy may determine how to comply with the emissions limitations. They must also comply with other State and federal air quality laws, including any specific limitations on emissions of NO_X and SO_2 from individual coal-fired generating units adopted by the Environmental Management Commission (EMC).
- A coal-fired generating unit that is subject to the emissions limitations as of July 1, 2002, will remain subject to the limitations regardless of any future transfer of ownership or operation.
- The EMC will require testing, monitoring, record keeping, and reporting adequate to assure compliance with the emissions limitations.
- The Governor may enter into an agreement with Duke Energy, Progress Energy, or both under which either of the utilities may transfer to the State any emissions

allowances acquired as a result of complying with the emission limitations. Each agreement will be filed with the Attorney General, the Secretary of State, the State Treasurer, the Secretary of Environment and Natural Resources (Secretary), and the Utilities Commission (Commission). The State Treasurer will hold the emissions allowances in trust for the people of the State and may transfer them only as authorized by the General Assembly. This provision is effective retroactively to June 1, 2002. [Both Duke Energy and Progress Energy entered into agreements pursuant to this provision on June 21, 2002].

- Duke Energy and Progress Energy will report to the Commission and the Department of Environment and Natural Resources (DENR) on or before April 1 of each year on plans and activities necessary to comply with the emissions limitations.

ENFORCEMENT PROVISIONS

For enforcement of the emissions limitations, the act adds:

- Violations of the emissions limitations to the list of air quality violations for which the Secretary may assess a civil penalty of no more than ten thousand dollars ($10,000). A violation of an emissions limitation is considered to be continuous from the day the emissions limitation was first exceeded through the end of the calendar year and the Secretary may assess a separate civil penalty for each day.
- Negligent violation of the emissions limitations to the list of air quality violations for which a person may be found guilty of a Class 2 misdemeanor. A person found guilty under this provision may also be subject to a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, which may not exceed a cumulative total of two hundred thousand dollars ($200,000) for each 30-day period of continuing violation.
- Knowing and willful violation of the emissions limitations to the list of air quality violations for which a person may be found guilty of a Class H felony. A person found guilty under this provision may also be subject to a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, which may not exceed a cumulative total of five hundred thousand dollars ($500,000) for each 30-day period of continuing violation.
- Knowing violation of the emissions limitations that places another person in imminent danger of death or serious bodily injury to the list of air quality violations for which a person may be found guilty of a Class C felony. A person found guilty under this provision may also be subject to a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, which may not exceed a cumulative total of one million dollars ($1,000,000) for each 30-day period of continuing violation.

COST RECOVERY

The act provides for cost recovery of expenditures incurred by Duke Energy and Progress Energy in meeting the emissions limits in the act, with the following key provisions:

- It allows the investor-owned public utilities to accelerate their recovery of estimated environmental compliance costs over seven years. Duke Energy must amortize $1.5 billion and Progress Energy must amortize $813 million. Environmental compliance costs are those capital costs incurred to comply with the emissions limitations that exceed the costs required to comply with federal air quality laws. Environmental compliance costs do not include:
  - Costs required to comply with a state or federal court order or judgment under which an investor-owned public utility is found liable for failure to comply with state or federal environmental law.
  - The net increase in costs, above those proposed by an investor-owned public utility to comply with the emissions limitations, that are necessary to comply with a settlement agreement, consent decree, or similar resolution of litigation arising from any alleged failure to comply with state or federal environmental law.

- Any criminal or civil penalty, including court costs, imposed on an investor-owned public utility for violation of state or federal environmental law.
- The net increase in costs, above those proposed by an investor-owned public utility to comply with the emissions limitations, that are necessary to comply with any limitation on emissions of NO_X or SO_2 that is imposed on an individual coal-fired generating unit by the EMC or DENR to address nonattainment of air quality standards.

➢ It establishes a rate freeze period through December 31, 2007. During this period, Duke Energy and Progress Energy must each amortize 70% or more of their environmental compliance costs. During the freeze, the Commission may allow adjustment of base rates or deferral of costs or revenues, upon the happening of one or more of the following:
- Governmental action leading to significantly reduced costs or major expenditures for the investor-owned public utility, other than those required by the act.
- Major expenditures incurred in restoring or replacing investor-owned public utility property damaged by force majeure.
- Severe threat to an investor-owned public utility's financial stability resulting from extraordinary causes beyond the utility's control.
- Investor-owned public utility earnings persistently and substantially exceeding the established rate of return for the utility.
- No later than ten days after the act becomes effective, the investor-owned public utilities must submit a compliance plan, including initial cost estimates, to the Commission and DENR. The Commission will consult with the Secretary as to whether the proposed compliance plans are adequate to achieve the emissions limitations.

➢ The Commission will hold a hearing to review the environmental compliance costs of each investor-owned public utility; revise and modify them to ensure they are just, reasonable, and prudent based on the most recent information available; and determine the annual cost recovery amounts for each investor-owned public utility in 2008 and 2009. The Commission will consult with the Secretary as to whether the actual and proposed activities of the investor-owned public utilities are adequate to achieve the emissions limitations. The Commission will issue an order based on its review and determination no later than December 31, 2007.

➢ In any general rate case initiated to adjust base rates effective after January 1, 2008, an investor-owned public utility can recover the costs it has actually expended to comply with the emissions limits less the total amount of accelerated cost recovery it recorded.

➢ Upon request by an investor-owned public utility, the Commission may approve lower rates for a customer or class of customers and may also approve optional market-based rates and services that do not increase base rates.

➢ The Commission may exercise any appropriate enforcement actions or order remedies for noncompliance.

➢ Duke Energy and Progress Energy will report to the Commission and DENR on or before April 1 of each year on plans and activities necessary to comply with the emissions limitations. The Secretary may review the information submitted in this report as to whether the actual and proposed activities of the investor-owned public utilities are adequate to achieve the emissions limitations.

OTHER AIR QUALITY ACTIVITIES, STUDIES, AND REPORTS

The act also:

➢ Provides that it is the intent of the General Assembly to use all available resources and means to induce other states and entities to achieve emissions reductions comparable to those required by the act.

- Directs the EMC to study the desirability and feasibility of obtaining reductions in emissions of NO_X and SO_2 beyond those required by the act. The EMC will report its findings and recommendations to the General Assembly and the Environmental Review Commission (ERC) annually beginning September 1, 2005.
- Directs the Division of Air Quality of DENR (DAQ) to study issues related to monitoring and controlling emissions of mercury from coal-fired generating units. DAQ will annually report its interim findings and recommendations to the EMC and the ERC beginning September 1, 2003, and will report its final findings and recommendations to the EMC and the ERC no later than September 1, 2005. Any costs of complying with future limits on emissions of mercury not associated with the act will not be recoverable as environmental compliance costs under the act.
- Directs DAQ to study issues related to monitoring and controlling emissions of carbon dioxide (CO_2) from coal-fired generating units and other stationary sources. DAQ will annually report its interim findings and recommendations to the EMC and the ERC beginning September 1, 2003, and will report its final findings and recommendations to the EMC and the ERC no later than September 1, 2005. Any costs of complying with future limits on emissions of CO_2 not associated with the act will not be recoverable as environmental compliance costs under the act.
- Requires DENR and the Commission to report on or before June 1 of each year to the ERC and the Joint Legislative Utility Review Commission on implementation of the act.

Except as otherwise provided, the act became effective June 20, 2002. (JH)

Extend Low-Sulfur Gasoline Implementation

S.L. 2002-75 (HB 1308) provides that gasoline meeting low-sulfur standards established by the U.S. Environmental Protection Agency (EPA) will be deemed to be compliant with State low-sulfur gasoline requirements, effective January 1, 2004. The Ambient Air Quality Improvement Act of 1999 (S.L. 1999-328) prohibited the manufacture or sale of gasoline in this State with a concentration of sulfur greater than 30 parts per million (ppm), except that a person may manufacture or sell gasoline with a concentration of sulfur up to 80 ppm if the average concentration of sulfur in the gasoline manufactured or sold by the person in this State in a one-year period is not more than 30 ppm. Under the EPA low-sulfur gasoline standards, the annual average sulfur concentration in gasoline manufactured or sold nationwide is capped at 120 ppm and the sulfur content in fuels is capped at a maximum concentration of 300 ppm, beginning January 1, 2004. In 2005, the average sulfur concentration is lowered to 90 ppm, with a maximum concentration of 300 ppm. Finally, in 2006, refiners must meet a 30 ppm average sulfur concentration with a maximum concentration of 80 ppm. The EPA low-sulfur standards also contain the following elements:

- Geographic phase-in areas (Does not change implementation in North Carolina, however).
- Hardship provisions for small refiners.
- Use of sulfur allotments or credits to meet low-sulfur requirements during phase-in.

The act allows manufacturers and sellers of gasoline to utilize the hardship and credit provisions of the federal standards during the phase-in period, but requires all gasoline sold or manufactured in this State after January 1, 2006, to comply with State low-sulfur standards.

The act became effective August 15, 2002, and expires on January 1, 2006. (TD)

Coastal Development

Amend CAMA Variance Process

S.L. 2002-68 (HB 1544) amends the Coastal Area Management Act (CAMA) variance statute so that the existing language regarding spirit, purpose, and intent is set out in the statute as a fourth enumerated factor. This would require a variance petitioner to satisfy the three currently enumerated factors as well as show that a "requested variance is consistent with the spirit, purpose, and intent of the rules, standards, or orders; will secure public safety and welfare; and will preserve substantial justice." The legislation also deletes obsolete language from the statute and makes other technical and conforming changes.

Background: During the 2001 Regular Session, the General Assembly authorized the Environmental Review Commission (ERC) to study the standards for granting variances by the Coastal Resources Commission (CRC) under the Coastal Area Management Act (CAMA). This study was authorized following the decision of the North Carolina Court of Appeals in *Williams v. North Carolina Department of Environment and Natural Resources*, 144 N.C. App. 479 (2001).

In *Williams*, the Court of Appeals reviewed the factors set out in G.S. 113A-120.1 that the CRC must consider when hearing a petition for a variance from CAMA rules. The statute provided that when the CRC "finds that (i) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, standards, or other restrictions applicable to the property, (ii) such difficulties or hardships result from conditions which are peculiar to the property involved, (iii) such conditions could not reasonably have been anticipated when the applicable guidelines, rules, standards, or restrictions were adopted or amended, the Commission may vary or modify the application of the restrictions to the property so that the spirit, purpose, and intent of the restrictions are preserved, public safety and welfare secured, and substantial justice preserved." The Court of Appeals found that the CRC must consider the three enumerated factors set out in the statute when hearing a petition for a variance. Historically, the CRC has considered four factors when reviewing variance petitions; the three enumerated factors, plus a fourth factor, which is set out in the statute but not enumerated. This fourth factor is based on whether the variance preserves the spirit, purpose, and intent of CAMA rules, secures public safety, and preserves substantial justice. The Court of Appeals in *Williams* did not recognize the fourth "spirit, purpose, and intent" factor historically employed by the CRC.

Staff of the Division of Coastal Management in the Department of Environment and Natural Resources worked with interested parties to develop the language contained in the act and presented the language to the ERC. The ERC recommended the language contained in the act to the 2002 Regular Session of the 2001 General Assembly.

The act became effective August 8, 2002. (JH)

Coastal Area Management Act Rule Disapproved

S.L. 2002-116 (HB 1540) allows implementation of the amendments to administrative rule 15A NCAC 7H .0309 (Use Standards for Ocean Hazard Areas: Exceptions), with the exception of the provision that deletes swimming pools from the list of structures that may be located within the oceanfront setback area. The oceanfront setback area is generally sixty feet landward of the vegetation line of the beach. Under the rule as amended by the act, swimming pools are still permitted within the oceanfront setback area if all other State and local regulations are met. The act also authorizes counties and cities to order the removal of a swimming pool upon a finding that the swimming pool is dangerous or prejudicial to public health or safety.

The act became effective September 17, 2002. The amended rule became effective August 1, 2002. (TD)

Use of Riprap to Construct Groins on Estuarine and Public Trust Waters

S.L. 2002-126, Sec. 29.2(f)-(g) (SB 1115, Sec. 29.2(f)-(g)) amends permit requirements under the Coastal Area Management Act (CAMA) to allow the use of general permits for the construction of riprap groins along estuarine waters. Prior law required a CAMA major permit for construction of riprap groins, while wooden groins could be authorized by general permit.

The subsections became effective July 1, 2002. (TD)

Use Dredge Spoils To Nourish Beach

S.L. 2002-126, Sec. 29.2(h)-(j) (SB 1115, Sec. 29.2(h)-(j)) amends the Dredge and Fill Act to require that clean, beach-quality material dredged from navigational channels be put on the ocean beach or shallow active nearshore area, as long as it is environmentally acceptable and compatible with other uses of the beach.

The subsections became effective July 1, 2002. (TD)

Environmental Health

Merge Radiation Protection into Division of Environmental Health

S.L. 2002-70 (SB 1251) abolishes the Division of Radiation Protection (DRP) of the Department of Environment and Natural Resources (DENR) and transfers the functions, powers, and duties of DRP to the Division of Environmental Health of DENR.

The act was signed by the Governor on August 12, 2002, and became effective retroactively to July 1, 2002. (TD)

Sanitation Rules/Effective Date & Field Test

S.L. 2002-160 (HB 1777). See **Health and Human Services**.

Fisheries

Extend Core Sound/Marine Fisheries Studies

S.L. 2002-15 (HB 1557) extends the moratorium on the issuance of new shellfish cultivation leases in Core Sound from October 1, 2002, to July 1, 2003. The act also directs the Joint Legislative Commission on Seafood and Aquaculture to review or study the following items and to report its findings and recommendations, if any, including any legislative proposals, to the 2003 General Assembly:

- Statutory changes recommended by the Marine Fisheries Commission in the August 2001 Hard Clam Fishery Management Plan and the August 2001 Oyster Fishery Management Plan.
- Recommendations of the Marine Fisheries Commission regarding the moratorium on the issuance of new shellfish cultivation leases in Core Sound and the shellfish cultivation program.

- The process by which the Department of Health and Human Services develops and issues fish consumption advisories.

The act became effective July 11, 2002. (JH)

Parks & Public Spaces

Natural Areas Added to State Parks System

S.L. 2002-89 (HB 1545) authorizes the Department of Environment and Natural Resources (DENR) to add Elk Knob State Natural Area and Beech Creek Bog State Natural Area to the State Parks System. G.S. 113-44.14(b) provides that DENR may add a State park, State natural area, State recreation area, State trail, State river, or State lake to the State Parks System only upon authorization by an act of the General Assembly.

Elk Knob is located approximately 20 miles north of Boone in the northeastern part of Watauga County and attains an elevation of 5,520 feet. Elk Knob supports several natural communities and three rare plants (trailing wolfsbane, Canada reed grass, and meehania). DENR has identified a 1,000-acre tract on the mountain that it seeks to acquire. The North Carolina Chapter of the Nature Conservancy is negotiating to secure an option on the tract from the landowner. The option would then be transferred to the State. The estimated purchase price is $4,000,000. DENR has received a $1,000,000 grant from the Natural Heritage Trust Fund for acquisition of the property. DENR is considering several different revenue sources, including the Natural Heritage Trust Fund, the Clean Water Management Trust Fund, and the Parks and Recreation Trust Fund, to complete the purchase of the property. The property would become the Elk Knob State Natural Area and recreational use that is consistent with protection of the site may be allowed.

Beech Creek Bog is located in Watauga County north of Banner Elk. The Bog is a Southern Appalachian Bog natural community, which is a type of non-riverine wetland that is very rare in North Carolina and not currently represented in the State Parks System. The Bog contains two rare species (bog clubmoss and the alder flycatcher) and is threatened by development. DENR has received a $675,000 grant from the Natural Heritage Trust Fund to purchase a 120-acre tract that includes most of the Bog. DENR has stated that the purchase of a smaller 65-acre tract estimated to cost $225,000 will be needed to acquire the entire Bog, provide a buffer for the Bog, and make the boundaries of the site more manageable. The properties would become Beech Creek Bog State Natural Area and provide protection and preservation of the natural communities and rare species.

The act became effective on August 22, 2002. (RZ)

Parks and Rec. Mutual Aid Agreement Authority

S.L. 2002-111 (SB 1262) provides that special peace officers employed by the Department of Environment and Natural Resources (DENR), more commonly referred to as "Park Rangers," are considered officers of a "law-enforcement agency" for purposes of G.S. 160A-288 (Cooperation between law-enforcement agencies). This will allow DENR to temporarily provide assistance to, as well as temporarily accept assistance from, certain law-enforcement agencies (e.g., municipal police departments, county police departments, and sheriffs departments) in enforcing the laws of North Carolina. The assistance may include allowing officers to work temporarily with officers of the requesting agency, including in an undercover capacity, and lending equipment and supplies. While working with the requesting agency, an officer will have the same jurisdiction, powers, rights, privileges and immunities, including those relating to the defense of civil actions and payment of judgments, as the officers of the requesting agency in addition to those the officer normally possesses. While on duty with the requesting agency, the

officer will be subject to the lawful operational commands of the superior officers in the requesting agency, but shall remain under the control of the officer's own agency for personnel and administrative purposes, including for purposes of pay. The officer shall be entitled to workers' compensation and the same benefits as though the officer were functioning within the normal scope of the officer's duties. Assistance may only be provided if requested in writing by the head of the requesting agency.

The act became effective September 6, 2002. (RZ)

Nature & Historic Preserve and Park System Removals

S.L. 2002-149 (SB 1211) involves two park properties, Boone's Cave State Natural Area and Mount Jefferson State Natural Area that have previously been accepted into the State Nature and Historic Preserve (Preserve). Article XIV, Section 5 of the North Carolina Constitution establishes the Preserve, which is designed to ensure 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 Council of State may petition the General Assembly to adopt a resolution accepting State properties for inclusion in the Preserve. 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. A resolution accepting properties into the Preserve must also be codified in the General Statutes. [Note that Section 4 of S.L. 1999-268, as amended by Section 3 of S.L. 2001-217 and Section 1 of S.L. 2002-3 (2002 Extra Session), provided for a vote at the next statewide general election on amending the North Carolina Constitution to provide that properties may be accepted into the Preserve through the enactment of a bill alone. The voters of the State approved the amendment, which was on the ballot for the November 5, 2002, statewide general election.] 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 act removes Boone's Cave State Natural Area from the Preserve and the State Parks System and authorizes the transfer of this property to Davidson County for management as a park. The instrument transferring this property must provide that the State retains a possibility of reverter and shall provide that in the event that Davidson County ceases to manage the property as a park the property shall revert to the State. The State may not otherwise sell or exchange the property.

Some time ago DENR erected a fire tower on the top of Mount Jefferson. In addition to using the structure as a fire tower, DENR placed radio repeaters on the tower for use by the Division of Forest Resources and the Division of Parks and Recreation. Over the years DENR allowed the State Highway Patrol, the Department of Transportation, and Ashe County to install repeaters or antennas on the fire tower and on a neighboring tower.

As stated above, once land is dedicated into the Preserve any use of the land for other than park, recreation, conservation, and historic preservation purposes must be authorized by a law enacted by a vote of three-fifths of the members of each house. The act explicitly authorizes the use of the site by State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communication purposes. The act also authorizes, notwithstanding G.S. 146-29.2, the State to lease space at the communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communication purposes. G.S. 146-29.2 prohibits the State from leasing lands of the State Parks System for the construction and placement of communications towers or the placement of antennas on State-owned structures. Thus, the act provides a limited exemption to the prohibition set out in G.S. 146-29.2.

The act became effective October 9, 2002. (RZ)

Land Conservation Statutes Amendments

S.L. 2002-155 (SB 1252) amends several statutes that involve land conservation, including those that govern the conservation tax credit program (Program) statutes. The Program, which the General Assembly directed the Department of Environment and Natural Resources (DENR) to establish in 1997, is designed to help conserve lands that possess ecological value. One of the main goals of the Program is to facilitate the use of conservation tax credits to conserve property. Conservation tax credits are available to businesses and individuals that donate an interest in real property located in North Carolina that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes. The General Assembly established the Conservation Grant Fund (Fund) in DENR as the main tool of the Program. Although the Fund has never received an appropriation from the General Assembly, any revenue in the Fund may be used for conservation grants, to pay for DENR's costs of administering the Fund, and to establish an endowment account for specified purposes.

The act provides that as a part of the Program, DENR will exercise its powers to protect real property and interests in real property that are donated for tax credit, conserved with the use of other financial incentives, or conserved through nonregulatory programs. The act also directs DENR to call upon the Attorney General for legal assistance in developing and implementing the Program and clarifies that State conservation land management agencies, local government conservation land management agencies, and private nonprofit land trust organizations are eligible to receive grants from the Fund. In addition, the act expands the purposes for which monies from the endowment account may be used. Furthermore, whenever DENR conveys real property or an interest in real property acquired for conservation it must retain a possibility of reverter, a right of entry, or other appropriate property interest to ensure that the real property or interest in real property will continue to be managed and maintained in a manner that protects ecological systems and the appropriate public use of these systems.

The act became effective October 9, 2002. (RZ)

Solid Waste

Remove Scrap Tire Tax Sunset

S.L. 2002-10 (HB 1578). See **Taxation**.

DENR Position for Scrap Tire Program

S.L. 2002-126, Sec. 12.5(a)-(b) (SB 1115, Sec. 12.5(a)-(b)) amends G.S. 130A-309.63 to codify, and thus make permanent, the Department of Environment and Natural Resources' authority to use revenue in the Scrap Tire Disposal Account to support a position to provide local governments with assistance in developing and implementing scrap tire management programs. The 1999 and 2001 budget bills each contained uncodified provisions similar in content, but those provisions were only effective through the end of the respective biennium.

The subsections became effective July 1, 2002. (RZ)

Funds for Warren County PCB Landfill

S.L. 2002-126, Sec. 12.6(a)-(c) (SB 1115, Sec. 12.6(a)-(c)) authorizes the Department of Environment and Natural Resources (DENR) to use up to two million five hundred thousand dollars ($2,500,000) from the Inactive Hazardous Sites Cleanup Fund for the 2002-2003 fiscal

year for the detoxification and remediation of the landfill located in Warren County that contains polychlorinated biphenyl (PCBs) and dioxin/furan contaminated materials. DENR is also authorized to use up to five hundred thousand dollars ($500,000) for the 2002-2003 fiscal year from the fees collected for water quality permits and credited to the Water Permits Fund if both of the following conditions are satisfied:

1. The detoxification and remediation of the Warren County PCB landfill cannot be completed without funds in addition to the two million five hundred thousand dollars ($2,500,000) from the Inactive Hazardous Sites Cleanup Fund.
2. All other funds, including all contingency funds, available to DENR for the detoxification and remediation of the Warren County PCB landfill have been spent or encumbered.

It is the intent of the General Assembly that the funds authorized under this section will be sufficient to complete the detoxification and remediation of the landfill, based on representations made to the General Assembly.

The subsections became effective July 1, 2002. (RZ)

Inactive Hazardous Sites Amendments

S.L. 2002-154 (HB 1564) amends the statutes that establish the Inactive Hazardous Sites Program (Program). This Program is responsible for locating, cataloging, and monitoring all of the inactive hazardous substance or waste disposal sites in the State. The Program's other mission is to facilitate the cleanup of those sites that are not being addressed by the federal Environmental Protection Agency as a National Priorities List site under federal law or by a State agency under a separate State program. Cleanups under the Program may be commenced under one of three possible scenarios:

- Responsible parties may enter into agreements to voluntarily remediate the site.
- The Secretary of Environment and Natural Resources (Secretary) may order the responsible party to remediate the site if the site endangers the public health or the environment.
- The Secretary may order the responsible party to immediately take action necessary to eliminate and correct the condition if the site is an imminent hazard (i.e., it is causing serious harm to the public health or environment or is likely to cause such harm).

In either of the last two scenarios, the Secretary may also initiate the remediation of the site by the Department of Environment and Natural Resources, subject to a reimbursement action against the responsible party.

The act provides explicit authority to the Secretary to assess an administrative penalty of up to $25,000 per day for a violation involving a voluntary remedial action implemented by a registered environmental consultant (REC). A REC is an environmental consulting and engineering firm that has been approved by the Department of Environment and Natural Resources (DENR) to implement and oversee the remediation and certify its compliance in lieu of a review by DENR staff. A responsible party may employ a REC for the remediation of lower priority voluntary remedial actions. The use of RECs is designed to encourage more cleanups by allowing DENR staff to focus on the supervision of the cleanups of high concern sites. Under prior law, the administrative penalty authority with respect to RECs was unclear and DENR asked for this explicit authority. These changes became effective October 1, 2002.

The act also expands the environmental permit waiver authority under the Program. If the cleanup of a site under the federal Superfund Program would be exempt from environmental permitting requirements, then State law allows the Secretary to grant a waiver from any State law or rule that requires an environmental permit. Federal law waives environmental permitting requirements where the cleanup is conducted entirely onsite. This waiver seeks to eliminate the incentive for responsible parties to landfill, and not necessarily treat, the waste off-site to avoid

permitting requirements that would be applicable for onsite remediation. The waiver is also intended to expedite cleanups. Under prior law, the State environmental permitting waiver provision only applied to voluntary cleanups and not ordered cleanups or cleanups conducted by the State. The act expands the applicability of the State provision to all cleanups conducted under the Program.

The act became effective October 9, 2002. (RZ)

Underground Storage Tanks

Clarify LUST Land-Use Restrictions/Deed Recordation

S.L. 2002-90 (HB 1575) amends the statutory provisions related to the use of land-use restrictions and recordation of the restrictions in connection with the cleanup of a release from a petroleum underground storage tank (UST). The act makes the following changes:

- Makes clarifying statutory changes to more accurately describe the process of recording a notice of any applicable land-use restrictions.
- Specifies that the Secretary of Environment and Natural Resources (Secretary) has the authority to require land-use restrictions under a remedial action plan for the cleanup of environmental damage resulting from a leaking petroleum UST. Previous statutory language did not specify who had the authority to require land-use restrictions.
- Authorizes the owner, operator, or other person responsible for the discharge or release of petroleum from a UST to record a Notice of Residual Petroleum without the agreement of the owner of the real property where the residual petroleum is located.
- Provides that the penalty and enforcement provisions for violations of petroleum UST cleanup requirements also apply when a person has failed to file any applicable notices of land-use restriction required under a remedial action plan.

Land-use restrictions for a site that is contaminated by a discharge or release of petroleum from a leaking petroleum 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 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 is 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 is effective retroactively to September 1, 2001, and applies to any deanup of petroleum from an underground storage tank site for which a determination that no further action is required is made on or after September 1, 2001. (GG, TD)

Water Quality/Quantity/Groundwater

Conserve Water/Promote Green Energy

S.L. 2002-167 (HB 1215):

- Directs local governments to include current and future water conservation and water reuse programs in their local water supply plans and directs the Department of Environment and Natural Resources (DENR) to include a summary of water conservation and water reuse programs in the State water supply plan.
- Directs the Environmental Management Commission (EMC) to adopt rules governing water conservation and reuse. The rules will establish minimum standards and practices for water conservation and reuse for water supply systems, State agencies, local governments, businesses and industrial water users, and agricultural and horticultural water users. Rules adopted pursuant to this legislation will not supercede or modify existing rules governing water used in the generation of electricity. The rules are to become effective following legislative review during the 2005 Regular Session of the General Assembly.
- Establishes a goal to reduce water consumption by State agencies by at least ten percent (10%).
- Directs DENR to evaluate water conservation measures being implemented in the State and to identify incentive programs and other voluntary programs that foster water conservation and reuse. DENR will submit an interim report no later than March 15, 2003, and a final report no later than February 15, 2004, to the Environmental Review Commission and the EMC.
- Directs the Utilities Commission to add the following items to its Green Power study:
  - Identification of funding mechanisms and incentives that would stimulate green power production in the State.
  - Identification of barriers that would impede green power production in the State and strategies to address those barriers.
  - Identification of appropriate methods of promoting the purchase of green power by the various electric customer groups.
  - Identification of methods whereby the State can provide incentives and resources that would stimulate the production and use of green power that would protect water quality; promote water conservation and water reuse; protect air quality; protect public health, safety, welfare, and the environment; and provide for the safe and efficient disposal of animal waste in the State.

In making recommendations to address these additional items, the Utilities Commission will consider the impact of its recommendations on residential, commercial, and industrial consumers of electricity in North Carolina. The Utilities Commission will make the final report on its Green Power study to the Commission on the Future of Electric Service in North Carolina and the Environmental Review Commission no later than March 15, 2003.

The act became effective October 23, 2002. (JH)

Miscellaneous

Extend Certain Compliance Deadlines

S.L. 2002-24 (HB 1584) extends compliance deadlines for the approval of certain hazard mitigation plans and for rules applicable to air emissions from existing small municipal waste combustion units.

Hazard Mitigation Plans. G.S. 166A-6.01(b)(2)a.3 provides that a local government must have an approved hazard mitigation plan to receive public assistance for a Type I disaster proclaimed after August 1, 2002. A Type I disaster is a localized or disaster event. A hazard mitigation plan includes an assessment of the local government's vulnerability to natural hazards, the local government's strategy for reducing potential losses from these hazards, and a schedule to monitor, evaluate, and update the plan. Public assistance is available for a Type I disaster in the form of grants for debris clearance, emergency protective measures, roads and bridges, crisis counseling, and assistance with public transportation needs.

Federal law requires local governments to have approved hazard mitigation plans to receive Hazard Mitigation Grant Program project grants for disasters declared after November 1, 2003. The Hazard Mitigation Grant Program is administered by the Federal Emergency Management Agency and provides grants to states and local governments to implement long-term hazard mitigation measures after a major disaster declaration. In order to make the State deadline consistent with the federal deadline, the act extends the date by which local governments must have approved hazard mitigation plans from August 1, 2002, to November 1, 2003.

Municipal Waste Incinerator Rules. On December 6, 2000, the federal Environmental Protection Agency (EPA) promulgated guidelines containing emission limits for certain pollutants emitted from existing small municipal solid waste combustion units. The term existing small municipal solid waste combustion unit (small MSW incinerator) refers to a municipal solid waste incinerator constructed on or before August 30, 1999 that has a capacity to incinerate 35 to 250 tons of municipal solid waste per day. The only two existing small MSW incinerators in the State are located at the New Hanover County Waste-To-Energy Conversion Facility. The federal guidelines do not directly regulate small MSW incinerators, but instead require States to develop rules to limit air emissions as provided by the guidelines. The State rules must require small MSW incinerators to achieve final compliance or cease operation by December 6, 2005, or three years after the EPA approves the State rules, whichever is earlier. Section 3.4 of S.L. 2001-440 directed the Environmental Management Commission (EMC) to adopt rules with a final compliance deadline of March 1, 2003, and the EMC has done so. This act directs the EMC to amend the rules to change the final compliance deadline from March 1, 2003, to December 1, 2004.

The act became effective July 18, 2002. (RZ)

Amend Pollution Abatement Tax Exclusion

S.L. 2002-104 (SB 1253). See **Taxation**.

Environmental Reports Amendments

S.L. 2002-148 (HB 1572) repeals a duplicative air quality statute and its reporting requirement, consolidates reports by the Clean Water Management Trust Fund, establishes an annual report on the comprehensive hazardous waste management plan, and changes the frequency of certain other environmental reports.

The act became effective October 9, 2002. (RZ)

Use of Aquarium Funds for Renovation and Expansion Expenses

S.L. 2002-159, Sec. 46 (SB 1217, Sec. 46) authorizes the use of funds in the North Carolina Aquariums Fund for renovation and expansion expenses at existing aquariums. The act also authorizes the Secretary of Environment and Natural Resources to expend monies from the North Carolina Aquariums Fund without the authorization of the General Assembly.

The act became effective October 11, 2002. (TD)

Environmental Technical Corrections

S.L. 2002-165 (HB 1007) corrects agency names and repeals obsolete statutory references, amends the statutes regarding State and local erosion and sedimentation control programs to ensure the consistent use of terminology, and makes other clarifying and conforming changes.

The act became effective October 23, 2002. (TD)

Amend Environmental Laws

S.L. 2002-176 (HB 1537) makes the following changes to various environmental laws:

Animal Waste Management System Inspection Pilot Program. The act extends the animal operation inspection pilot program being conducted in three counties from September 1, 2002 to September 1, 2003. Under the pilot program, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources (DENR) may perform the required annual inspection of animal operations permitted under Article 21 of Chapter 143 of the General Statutes. The act also directs DENR to include a comparison of the costs of conducting operations reviews and inspections under the pilot program with the costs of conducting operations reviews and inspections in the standard program.

Soil and Water Conservation Commission Membership. The act allows members of the Soil and Water Conservation Commission to hold concurrent offices, as authorized by G.S. 128-1.1 and Article VI, Section 9, of the Constitution of North Carolina.

Watershed Improvement Grants. The act authorizes the Soil and Water Conservation Commission to approve grants for small watershed projects related to dam rehabilitation and improvement. The federal Small Watershed Rehabilitation Amendments of 2000 (PL 106-472) authorized the Natural Resources Conservation Service of the Unites States Department of Agriculture to provide grants for restoration and rehabilitation of aging dams. The federal grant program provides up to 65 percent (65%) of the total cost of the rehabilitation project. The act allows the Soil and Water Conservation Commission to approve grants that can be used to cover up to half (50%) of the remaining 35 percent (35%). Local sponsors may also provide the remaining portion through "in kind" costs for the value of land rights, project administration, and other planning and implementation costs associated with the project.

Environmental Review Commission Membership. The act allows members of the Environmental Review Commission who are not reelected to the General Assembly to complete their term of service on the Commission. Similar language exists for several standing legislative committees and commissions.

Eligibility for Clean Water Revolving Fund Grants. The act amends the definition of "local government unit" in G.S. 159G-3(10) to include the Eastern Band of Cherokee Indians in North Carolina. Inclusion in the definition of local government unit in the section authorizes the Eastern Band of Cherokee Indians to apply for loans or grants from the Clean Water Revolving Loan and Grant Fund.

State Infrastructure Council. The act authorizes the State Infrastructure Council, upon the request of the chair of the Council and upon approval of the Legislative Services Commission, to meet in the Legislative Building or the Legislative Office Building.

Water Supply Accounts. The act provides that funds in the Emergency Water Supply Revolving Loan Account may be used to provide revolving emergency loans for communities facing a drought emergency, in addition to communities that face a serious public health hazard related to their water supply system. The act also authorizes DENR to transfer funds from the General Water Supply Revolving Loan and Grant Account to the Emergency Water Supply Revolving Loan Account in the event that the Secretary of Environment and Natural Resources certifies that a drought emergency exists and that additional funds are needed to assist water supply systems.

The act became effective October 31, 2002. (TD)

Studies

New / Independent Studies / Commissions

Roanoke River Basin Bi-State Commission

S.L. 2002-177 (SB 204) provides for North Carolina's participation in the Roanoke River Basin Bi-State Commission (Commission) and creates the Roanoke River Basin Advisory Committee (Committee). The Commission is composed of 18 members, with nine members representing North Carolina and nine members representing Virginia. The Commonwealth of Virginia enacted parallel legislation in 2002 that provides for their participation in the Commission and creates the Virginia Roanoke River Basin Advisory Committee.

The North Carolina delegation to the Commission will include three members of the Senate and three members of the House of Representatives, whose districts include a portion of the Roanoke River Basin, and three nonlegislative members of the Advisory Committee. State and federal legislators from both states, who are not appointed to the Commission, may be nonvoting, ex-officio members of the Commission. All persons appointed to the Commission must live within the Basin's watershed.

The Commission has no regulatory authority. Its purposes include:

- To provide guidance and make recommendations to local, state, and federal legislative and administrative bodies on the use, stewardship, and enhancement of the water and other natural resources within the Basin.
- To provide a forum for discussion of issues affecting the Basin's water quality, water quantity, and natural resources.
- To promote communication, coordination, and education among stakeholders.
- To identify problems and recommend solutions.
- To undertake studies and prepare, publish, and disseminate information through reports, and other communications, related to water quantity, water quality, and other natural resources of the Basin.

In order to facilitate communication and maximize participation by interested parties in the Basin, the Commission will establish standing and ad-hoc committees that include the following stakeholders:

- Permit holders.
- Public officials and government entities.
- Agriculture, forestry, and soil and water conservation districts.
- Other Roanoke River Basin interest groups.

The Advisory Committee is composed of 21 members and will advise and assist the North Carolina delegation to the Commission in performing its duties. The Advisory Committee will consist of:

- Three members of the Senate and three members of the House of Representatives whose districts include a part of the North Carolina portion of the Roanoke River Basin.
- The member of the U.S. House of Representatives who represents North Carolina Congressional District 1 or the Representative's designee.
- The member of the U.S. House of Representatives who represents North Carolina Congressional District 13 or the Representative's designee.
- The Secretary of Environment and Natural Resources or the Secretary's designee.
- 12 members, 2 of which are recommended by each of the following local planning councils and commissions:
  - Piedmont Triad Council of Governments.
  - Northwest Piedmont Council of Governments.
  - Kerr-Tar Regional Council of Governments.
  - Upper Coastal Plain Council of Governments.
  - Mid-East Commission.
  - Albemarle Economic Development Commission.

The act provides that the Department of Environment and Natural Resources (DENR) and the Virginia Department of Environment and Environmental Quality will provide staff support to the Commission. DENR will provide staffing and meeting facilities for the Advisory Committee. The act also directs the Commission to submit an annual report, including any recommendations, to the Governor of North Carolina, the Environmental Review Commission of North Carolina, the Governor of Virginia, and the General Assembly of Virginia.

The act became effective October 1, 2002. (GG, TD)

Referrals to Existing Commissions/Committees

Marine Fisheries Studies

S.L. 2002-15, Secs. 2-4 (HB 1557, Secs. 2-4) direct the Joint Legislative Commission on Seafood and Aquaculture to review or study the following items and to report its findings and recommendations, if any, including any legislative proposals, to the 2003 General Assembly:

- Statutory changes recommended by the Marine Fisheries Commission in the August 2001 Hard Clam Fishery Management Plan and the August 2001 Oyster Fishery Management Plan.
- Recommendations of the Marine Fisheries Commission regarding the moratorium on the issuance of new shellfish cultivation leases in Core Sound and the shellfish cultivation program.
- The process by which the Department of Health and Human Services develops and issues fish consumption advisories.

These sections became effective July 11, 2002. (JH)

Referrals to Departments, Agencies, Etc.

Improve Air Quality

S.L. 2002-4 (SB 1078). See **Enacted Legislation** for studies information.

Water Conservation

S.L. 2002-167, Sec. 5 (HB 1215, Sec. 5) directs the Department of Environment and Natural Resources (DENR) to evaluate water conservation measures being implemented in the State and to identify incentive programs and other voluntary programs that foster water conservation and reuse. DENR will submit an interim report no later than March 15, 2003, and will submit a final report no later than February 15, 2004, of its findings and recommendations to the Environmental Review Commission and the Environmental Management Commission.

This section became effective October 23, 2002. (JH)

Promote Green Energy

S.L. 2002-167, Sec. 6 (HB 1215, Sec. 6) directs the Utilities Commission to add the following items to its Green Power study:

- Identification of funding mechanisms and incentives that would stimulate green power production in the State.
- Identification of barriers that would impede green power production in the State and strategies to address those barriers.
- Identification of appropriate methods of promoting the purchase of green power by the various electric customer groups.
- Identification of methods whereby the State can provide incentives and resources that would stimulate the production and use of green power that would protect water quality; promote water conservation and water reuse; protect air quality; protect public health, safety, welfare, and the environment; and provide for the safe and efficient disposal of animal waste in the State.

In making recommendations to address these additional items, the Utilities Commission will consider the impact of its recommendations on residential, commercial, and industrial consumers of electricity in North Carolina. The Utilities Commission will make the final report on its Green Power study to the Commission on the Future of Electric Service in North Carolina and the Environmental Review Commission no later than March 15, 2003.

This section became effective October 23, 2002. (JH)

Chapter 11
Health and Human Services

Linda Attarian (LA), Amy Compeau (AC) Dianna Jessup (DJ), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Licensure

License by Credentials/Dentistry

S.L. 2002-37 (SB 861) authorizes the North Carolina Board of Dental Examiners (Board) to do the following:

- Issue North Carolina licenses to dentists and dental hygienists by credential review.
- Issue limited volunteer licenses to dentists to practice, without compensation, in non-profit health care facilities serving low-income populations.
- Impose fees in the amounts up to: 1) $2,000 for a dental license issued by credentials; 2) $1,000 for a dental hygiene license issued by credentials; 3) $100 for a limited volunteer license; and 4) $25 for a limited volunteer dental license annual renewal.
- Allow persons holding an instructor's license to practice beyond the confines of The University of North Carolina's Dental School and teaching hospital, including any academic medical center in North Carolina.

Licensure by Credentials – Dentistry. The Board may issue a license by credentials to out-of-state dentists who have been in practice for at least five years immediately preceding the date of application and who meet other requirements of the Board. Once licensed in North Carolina, a licensee must initiate his or her practice in North Carolina within one year from the date the license is issued, must limit practice to North Carolina, and must "actively practice dentistry" to retain the license.

Licensure by Credentials – Dental Hygiene. The Board may issue a license by credentials to out-of-state dental hygienists who have been practicing for at least two years immediately preceding the date of application and who meet other requirements of the Board. The licensee must have completed dental hygiene education and training approved by the Board, have passed the National Board of Dental Hygiene Examination administered by the Joint Commission on National Dental Examination, and have graduated from a dental hygiene program or school accredited by the Commission on Dental Accreditation of the American Dental Association.

Limited Volunteer Dental License. The act establishes a volunteer licensure procedure for dentists with expired licenses from North Carolina or current or expired licenses from other states who have practiced within the last five years and who wish to practice in non-profit health care facilities serving low-income populations of this State. Any holder of the limited volunteer dental license shall be guilty of a Class 1 misdemeanor if he or she is found to practice dentistry in any setting other than a nonprofit health care facility serving low-income populations, with each day being a new violation.

Instructor's License. The act expands the scope of practice that is authorized under an instructor's license by 1) allowing the licensee to practice dentistry beyond the confines of the principal facility of a dental school or college that offers a doctoral program in dentistry (currently UNC-CH), and 2) by allowing the licensee to practice in any accredited academic medical center and adjacent teaching hospital in North Carolina, as long as the licensee meets the academic medical center's credentialing standards. In addition, the act provides that those instructors,

who had been teaching dentistry in dental schools or colleges in North Carolina prior to this licensure requirement, must obtain an instructor's license and pay the required fee as of January 1, 2003.

The act becomes effective January 1, 2003. (LA)

Chiropractic Technicians Fee

S.L. 2002-59 (HB 1747) authorizes the Board of Chiropractic Examiners to collect a fee for the annual recertification of chiropractic diagnostic imaging technicians. The act establishes a maximum fee of $50 for the renewal of certification of competence payable to the secretary of the Board.

The act became effective August 1, 2002. (AC)

Interpreter/Transliterator Licensure

S.L. 2002-182 (HB 1313) establishes licensure requirements for persons practicing as an interpreter or transliterator for a fee or consideration or holding themselves out as licensed interpreters or transliterators. Interpreters and transliterators are persons who practice the act of providing accessible communication between and among persons who are deaf or hard of hearing and those who are hearing by various means defined by statute. A nine-member Interpreter and Transliterator Licensing Board will be established to examine and determine the following:

- The qualifications of applicants for licensure.
- The issuance, renewal, denial, suspension, or revocation of licenses.
- The carrying out of disciplinary actions.
- The creation of continuing education requirements.

The Board will be able to conduct criminal records checks of applicants for licensure and renewal. Licensure will not be required of persons providing interpreter or transliterating services in religious procedures, mentoring or training programs, or schools, interns, and persons interpreting in an emergency situation. The act provides for the grandfathering of certain persons currently acting as interpreters and transliterators.

The act became effective October 31, 2002; persons will not be required to be licensed until July 1, 2003. (DJ)

Medicaid

Medicaid Program

S.L. 2002-126, Sec. 10.11 (SB 1115, Sec. 10.11), as amended by S.L. 2002-159, Secs. 59 and 74 (SB 1217, Secs. 59 and 74), makes the following changes to the Medicaid program:

- **Coverage to pregnant women and children.** It modifies the policy for determining eligibility for Medicaid benefits for pregnant women by counting the income of a minor's parents if the minor resides in the home.
- **Personal care services limitations.** It reduces personal care services by reducing the monthly limit for services from 80 hours per month to 60 hours per month.
- **Federal transfer of assets policies.** It allows the Department of Health and Human Services (Department) to apply federal transfer of asset policies and attachment of liens to properties excluded as tenancy-in-common or as nonhomesite property made "income producing." This provision will become effective not earlier than November 1, 2002. The Department may also apply federal transfer of asset

policies to noninstitutionalized individuals, which will become effective no less than 30 days after all Medicaid recipients have been notified.

- **Eligibility determination.** The Division of Medical Assistance adopted the Supplemental Security Income method for considering equity value in income-producing property for the purpose of determining eligibility for aged, blind, and disabled persons. S.L. 2002-159, Sec. 74 specifies that the equity value of life estate interests in real property and tenancy-in-common interests shall continue to be exempt when using the SSI method for determining eligibility, even if the property is income producing. S.L. 2002-159, Sec. 74 became effective October 11, 2002.

Unless otherwise stated, this section became effective July 1, 2002. (LA)

Carolina Access Program Improvements

S.L. 2002-126, Sec. 10.12 (SB 1115, Sec. 10.12) provides for the expansion of Carolina Access II/III activities in order to reduce expenditures for the Medicaid program. These cost-saving activities include reducing hospital admissions, reducing ER visits, using best prescribing practices, increased generic prescribing, implementing polypharmacy review, reducing therapy visits, and better managing of high risk/high cost patients. Beginning December 1, 2002 and quarterly thereafter, the Department of Health and Human Services will report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Office of State Budget and Management, and the Fiscal Research Division on the cost-effectiveness of these programs based on actual savings achieved.

This section became effective July 1, 2002. (AC)

Medicaid Case Management Services

S.L. 2002-126, Sec. 10.14 (SB 1115, Sec. 10.14) requires the Department of Health and Human Services (Department) to reduce case management services for adults and children for the 2002-2003 fiscal year by reducing rates, streamlining services, and eliminating duplicative services. The Department was required to report on its plan for these reductions 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 no later than November 1, 2002.

This section became effective July 1, 2002. (AC)

Supplemental Rebates from Pharmaceutical Manufacturers

S.L. 2002-126, Sec. 10.19(b) (SB 1115, Sec. 10.19(b)), as amended by S.L. 2002-159, Sec. 75 (SB 1217, Sec. 75) forbids the Secretary of the Department of Health and Human Services from requesting or requiring supplemental rebates from pharmaceutical manufacturers.

S.L. 2002-126, Sec. 10.19(b) became effective July 1, 2002. S.L. 2002-159, Sec. 75 became effective October 11, 2002. (AC)

Mental Health, Developmental Disabilities, and Substance Abuse

MH/DD/SAS Commission Changes

S.L. 2002-61 (HB 1515) increases the membership of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) from 29 to 30 members, changes the term limits from three consecutive two-year terms to two consecutive three-year terms, further specifies categories of appointment to the Commission, and directs the Secretary of the Department of Health and Human Services (Secretary) to assign an individual to the Commission who is knowledgeable in the rule-making processes of the Commission and the Secretary and in the fields of mental health, developmental disabilities, and substance abuse services to assist the Commission in its work. The composition of the Commission as amended by the act includes: 2 licensed physicians, 1 licensed attorney, 12 consumers or immediate family members, 10 professionals, 4 "at large" members, and either 1 additional licensed physician or professional. The act adds more professionals to the composition of the Commission and requires the Governor to select no more than half of the consumers or immediate family members of consumers from nominations submitted by Coalition 2001.

The act became effective August 1, 2002. The categories of appointment as amended by the act will be phased-in upon the expiration of the term of a person initially appointed or reappointed prior to July 1, 2002. (AC)

Substance Abuse Prevention Services

S.L. 2002-126, Sec. 10.24 (SB 1115, Sec. 10.24) designates an Office of Substance Abuse Prevention (Office) within the Department of Health and Human Services (Department) as outlined in the recently developed North Carolina Comprehensive Strategic Plan for Substance Abuse Prevention (Plan). The Office is responsible for implementation of the goals of the Plan, and ensuring the provision of evidence-based prevention services through an outcome-based system, delivered by qualified prevention professionals within licensed prevention programs. 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 no later than December 1, 2002.

This section became effective July 1, 2002. (LA)

DHHS Coordination of Rules

S.L. 2002-126, Sec. 10.31 (SB 1115, Sec. 10.31) requires the Secretary of the Department of Health and Human Services (Secretary) and the chairs of various commissions that adopt rules affecting the area of mental health, developmental disabilities, and substance abuse services to collaborate in developing a process to identify and resolve issues pertaining to duplication and conflict of commission rules. The Secretary and the Commissions were required to implement this process by November 1, 2002. The Secretary was also required to report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services by November 15, 2002 on the following:

- The status of the review of rules to determine the existence of ambiguity, duplication, or conflict.
- Specific rules identified that are in conflict and any recommended action for resolving the conflict.
- Any necessary statutory changes to accomplish the rules review process required by this section.

This section became effective July 1, 2002. (DJ)

Replacement Hospitals for Cherry and Broughton Psychiatric Hospitals

S.L. 2002-159, Sec. 86 (SB 1217, Sec. 86) requires the Department of Health and Human Services (Department) to expend $2,000,000 from funds available in the 2002-2003 fiscal year for the purpose of planning and preliminary design of replacement hospitals for Cherry and Broughton psychiatric hospitals in Wayne and Burke counties to serve the eastern and western regions of the State. The Department must ensure that the use of funds for these purposes do not adversely impact direct services for mental health, developmental disabilities, or substance abuse.

This section became effective October 11, 2002. (AC)

Public Health

AIDS Drug Assistance Program

S.L. 2002-126, Sec. 10.48 (SB 1115, Sec. 10.48) repeals the AIDS Drug Assistance Program's (ADAP) authority to extend eligibility to individuals with incomes greater than 125% but less than or equal to 150% of the federal poverty level due to inadequate resources available to ADAP. This section further requires the Department of Health and Human Services to develop a cost management plan for ADAP and to make an interim report of its activities no later than December 1, 2002 and a final report no later than May 1, 2003.

This section became effective July 1, 2002. (LA)

Effective Date & Field Test/Sanitation Rules

S.L. 2002-160 (HB 1777) delays the effective date of administrative rules and amendments to administrative rules governing the sanitation of certain health care institutions and directs the Division of Environmental Health (Division) within the Department of Environment and Natural Resources (Department) to perform a four-month field test of the delayed rules and analyze the field test data to determine whether any of the delayed rules should be revised. On or before March 1, 2003, the Division will report on the results of the field test and provide any recommendations to the Commission for Health Services, and the Division will report the status of any revisions of the delayed rules to the Environmental Review Commission.

The act also authorizes the Commission for Health Services and the Medical Care Commission to adopt temporary and permanent rules to revise the delayed rules. The Commission for Health Services and the Medical Care Commission may adopt temporary rules pursuant to these provisions until July 1, 2003.

In addition, the act requires the Secretary of Health and Human Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to expedite the process for the waiver of one or more rules adopted by the Secretary or the Commission at the request of an area authority or county program when the request is made for the purpose of implementing the program's business plan for its management and delivery of mental health, developmental disabilities, and substance abuse services. The Secretary was required to report on the Department's activities to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by October 1, 2002 and annually thereafter.

The act became effective October 17, 2002 and the sections pertaining to the Secretary of the Department of Health and Human Services and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services expire July 1, 2005. (LA)

Public Health Bioterrorism Preparedness

S.L. 2002-179 (HB 1508) is a recommendation of the Public Health Study Commission. The act creates a new Article in the public health law and amends North Carolina's communicable disease control laws to allow public health officials to prepare for and respond to suspected public health threats that may be caused by an act of terrorism using nuclear, biological, or chemical agents. The act defines a "public health threat" as a situation likely to cause an immediate risk to human life, of serious physical injury or illness, or of serious adverse health effects. The act does the following:

- Expands the authority of the State Health Director and local public health directors to conduct surveillance and investigate cases of an illness or condition caused by a suspected communicable disease outbreak or an illness, disease, or other health hazard resulting from a suspected terrorist attack.
- Provides for judicial review of actions to quarantine, isolate, or otherwise limit the freedom of movement or access of a person or animal or of access to a person or animal whose freedom of movement is limited.
- Provides for coordination between the Secretary of Crime Control and Public Safety and the State Health Director regarding emergency operations and public health matters.
- Requires the State Veterinarian to notify the State Health Director and the Director of the Division of Environmental Health in the Department of Environment and Natural Resources of any reports indicating a potential outbreak of a disease or condition that can be transmitted to humans.
- Directs the State Health Director to establish a pilot program that will provide for the release of confidential emergency medical data in order to assist the State Health Director in surveillance to protect public health.
- Directs the North Carolina Medical Care Commission to adopt rules to expand its education standards and criteria of persons trained to administer lifesaving treatment to any agent for adverse reactions from insect stings that might cause anaphylaxis.
- Allows a law enforcement officer to detain an individual arrested for violation of an order limiting freedom of movement or access pursuant to the act to an area until the initial appearance before a judicial official.
- Allows a judicial official to deny pretrial release to a person arrested for violation of an order limiting freedom of movement or access who poses a threat to the health and safety of others.
- Amends current law to provide that any records and materials, etc., produced by proceedings of a medical care committee under G.S. 90-21.24A or G.S. 131E-95, are confidential and not subject to discovery or introduction into evidence in any civil action against an ambulatory surgical facility. These sections will apply to civil actions that are pending as well as civil actions filed on or after October 1, 2002.

The act became effective October 1, 2002. (LA)

Miscellaneous

Care For School Children with Diabetes Act

S.L. 2002-103 (SB 911). See **Education**.

NC Health Choice

S.L. 2002-126, Sec. 10.20 (SB 1115, Sec. 10.20) lowers the dispensing fee paid to providers under the North Carolina Health Choice program from $6.00 per prescription to $5.60

per prescription for generic drugs and $4.00 per prescription for brand name drugs, the same per prescription fee paid under the Medicaid program.

The new dispensing fee rates will become effective no later than January 1, 2003. (DJ)

Persons with Disabilities Changes

S.L. 2002-163 (SB 866) amends the North Carolina's Persons with Disabilities Protection Act to conform to recent federal regulations regarding the use of an integrated setting for people with disabilities and to make other changes that parallel the federal Americans with Disabilities Act (ADA). The act adds a definition of information technology – which is "electronic data processing goods and services, telecommunications goods and services, security goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes" and specifies that services provided by State entities via information technology must be administered in the most integrated setting appropriate to the needs of persons with disabilities.

The act also amends the current standard used to determine whether an accommodation provided by an employer is "reasonable." Under current North Carolina law, an employer is not required to make changes in the workplace to accommodate a disabled employee if the costs would exceed 5% of the employee's annual salary. This formula was developed prior to the enactment of and is inconsistent with the ADA. The act adopts the "undue hardship" language found in the ADA, and provides that an employer would not be required to make any accommodations constituting an "undue hardship." This is defined as a significant difficulty or expense and consists of several factors to be weighed in making this determination, including the cost, the overall financial resources of the employer, the number of employees at the facility, the type of operations at the facility, and any other impact on the employer's facility.

Finally, the act directs the State Office on the ADA to adopt rules providing dispute resolution processes for accommodating accessibility requests. The act specifically excludes matters that constitute grounds for a contested case under the State Personnel Act (Chapter 126 of the General Statutes).

The act becomes effective January 1, 2003. The provisions of G.S. 168A-7 (Discrimination in Public Services) are made applicable to information technology placed into service on or after January 1, 2004. (DJ)

LEAs and Group Homes

S.L. 2002-164 (SB 163). See **Education.**

Studies

Legislative Research Commission

Studies Act of 2002

S.L. 2002-180, Sec. 2.1(1)b and Sec. 2.1(4)e (SB 98, Sec. 2.1(1)b and Sec. 2.1(4)e) authorize the Legislative Research Commission (LRC) to study:

- Naturopathy.
- Jail safety standards.

The LRC may report its findings, together with any recommended legislation, to the 2003 General Assembly.

These sections became effective October 31, 2002. (AC)

New / Independent Studies / Commissions

Statewide Emergency Preparedness Study Commission

S.L. 2002-180, Part XV (SB 98, Part XV) creates the Statewide Emergency Preparedness Study Commission (Commission) and authorizes the Commission to study the delivery of emergency medical services in the State. In the course of its study, the Commission will:

- Examine the current funding of the State Trauma System.
- Analyze impediments to the seamless delivery of care to trauma victims and determine means of streamlining the delivery of improved and more efficient care.
- Examine ways of improving the quality and delivery of care to trauma and emergency victims.
- Examine methods of improving North Carolina's readiness to handle trauma resulting from massive disasters.
- Any other matters related to the delivery of emergency medical services.

The Commission may submit progress reports to the 2003 General Assembly and will submit a final report to the 2005 General Assembly. The reports will include any legislative proposals necessary to implement the Commission's recommendations as well as an analysis of any fiscal impact of the recommendations. The Commission will terminate upon filing its final report.

This part became effective October 31, 2002. (AC)

Referrals to Existing Commissions / Committees

Joint Legislative Health Care Oversight Committee

S.L. 2002-180, Part X (SB 98, Part X) authorizes the Joint Legislative Health Care Oversight Committee (Committee) to study health care profession licensing boards. The Committee may study the feasibility of establishing a uniform appointments process for licensing boards so as to ensure that appointments made to each board are representative of all licensees of that board. The Committee may report its findings, together with any recommended legislation, to the 2003 General Assembly.

This part became effective October 31, 2002. (AC)

Chapter 12
Insurance

Linda Attarian (LA), Trina Griffin (TG), Hal Pell (HP), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Uniform Provider Credentialing by Health Insurance Plans

S.L. 2002-126, Sec. 6.9 (SB 1115, Sec. 6.9) amends the Uniform Provider Credentialing statute, to ensure that health benefit plans make payments to new health care providers who have joined a practice that is under contract with the health plan upon the completion of the credentialing process (i.e. 60 days from the date of application) rather than upon the date the health plan activates the new physician into the network, which may exceed 60 days from the date of application.

This section became effective October 1, 2002. (LA)

Insurance Regulatory Fund Changes

S.L. 2002-144 (HB 1105) makes various changes regarding the funding and operation of the Department of Insurance (Department) to:

- Add to the categories of appropriations for which money credited to the Insurance Regulatory Fund should be used to reimburse the General Fund:
  - Money appropriated to the Department to pay its expenses in connection with providing staff support for State boards and commissions.
  - Money appropriated to the Department to pay its expenses incurred in connection with continuing education programs under its purview and in connection with the purchase and sale of copies of the North Carolina State Building Code.
- Replace the general authority provided the Commissioner of Insurance (Commissioner) to establish fees for licensees and course vendors for the administration of the continuing education course program with the specific requirements that a provider of continuing education courses to licensees of the Department submit, upon application to the Commissioner for approval of a course, a $100 per course filing fee, up to an annual maximum fee of $2500, and submit a $1 fee per approved credit hour provided per individual completing the continuing education courses, with all funds to be credited to the Insurance Regulatory Fund.
- Eliminate the special fund established for the North Carolina Manufactured Housing Board's administration and direct that all funds received by the Board under the provisions of the article governing the North Carolina Manufactured Housing Board be credited to the Insurance Regulatory Fund.
- Reduce the number of copies of the North Carolina State Building Code (Code) which must be distributed to certain State agencies or officials and provide that funds from sales of the Code be credited to the Insurance Regulatory Fund.
- Require insurers being examined under the Examination Law to bear the Department's cost of retaining professionals, such as attorneys, independent CPAs, and independent actuaries as examiners for purposes of the examination.
- Clarify that the Commissioner can require an insurer being examined to send to the Department copies of its records, related to property, assets, business and affairs of

the insurer, certified by the insurer's chief executive or financial officer that the copies are true and accurate; mandate that the cost of the examination (but not Departmental employees salaries and benefits) is to paid by the insurer; and provide that refusal to pay the cost is grounds for suspension, revocation, or refusal of the insurer's license.

- Eliminate the nearly $1.9 million dollar appropriations reduction from the General Fund previously enacted in the 2002 budget bill such that the Department would have a positive adjustment of $600,000 to its Insurance Regulatory Fund rather than a $1,282,104 negative adjustment to the Fund.

The act became effective July 1, 2002, and all of its provisions expire June 30, 2003, except those regarding the 2002-2003 appropriations and budget. (FF)

Confidentiality of Health Information under the Managed Care Patient Assistance Program

S.L. 2002-159, Sec. 45 (SB 1217, Sec. 45) provides for the confidentiality of an individual's health information in the possession of the Managed Care Patient Assistance Program (Program). "Health information" means any of the following:

- Information relating to the past, present, or future physical or mental health or condition of an individual.
- Information relating to the provision of health care to an individual.
- Information relating to the past, present, or future payment for the provision of health care to an individual.
- Information, in any form, that identifies or may be used to identify an individual, that is created by, provided by, or received from any of the following:
  - An individual or an individual's spouse, parent, legal guardian, or designated representative.
  - A health care provider, health plan, employer, health care clearinghouse, or an entity doing business with these entities.

The Managed Care Patients' Bill of Rights, which was enacted last year, established the Program to provide information and assistance to individuals enrolled in managed care plans, but it did not include a provision for protecting the confidentiality of health information that might be obtained by the Program.

This section became effective October 11, 2002. (TG)

Beach and FAIR Plan Amendments to Address Insurance Availability Issues

S.L. 2002-185 (HB 1120) amends several provisions of the Beach and FAIR Plan laws to enhance the availability of homeowners' insurance in North Carolina's beach and coastal areas, as well as statewide. The act also amends provisions governing the North Carolina Motor Vehicle Reinsurance Facility and governing special deposits respecting workers' compensation insurance.

The act requires issuance by the Beach Plan of a homeowners' insurance policy, approved by the Commissioner by May 1, 2003, and clarifies that this new coverage will be:

- Available for principal residences in the 18 counties and beach areas currently covered under the Beach Plan only if coverage is unavailable in the voluntary market;
- Similar to coverage offered in the voluntary market; and
- No more favorable in its terms and conditions than homeowners' policies offered in the voluntary market in the beach and coastal counties.

Rates for the new homeowners' policy must be set in accordance with the general rate standards in G.S. 58-40-20(a) ["not excessive, inadequate or unfairly discriminatory"] but the

requirements that the rates be in accordance with the manual rates and the prohibition against a special surcharge are inapplicable to the rate setting for these homeowners' insurance policies.

It provides that coverage for all policies offered under the Beach Plan, including the new homeowners' policy, will be automatic and immediate upon payment by the customer to his or her insurance agent, in accordance with rules and procedures, including limitations on binding authority, established in the Beach Plan's plan of operation. Under this provision, coastal clients will no longer have to wait for their coverage to become effective. This provision becomes effective January 1, 2003.

The act also requires that the Beach and FAIR plans establish unearned premium reserves and reserves for losses, and that these entities seek a ruling from the IRS as to the tax status of these reserves; and it places the Beach and FAIR plans' Board of Directors under the Open Meetings laws.

Separate from amendments respecting homeowners' insurance availability, the act:

- Makes technical changes regarding appointments to the NC Motor Vehicle Reinsurance Facility.
- Allows the Commissioner of Insurance to use special deposit proceeds from a company to protect policyholders and injured employees under workers' compensation policies.

(See also **Studies**.)

Except as otherwise indicated, the act became effective October 31, 2002. (FF)

Miscellaneous Insurance Amendments

S.L. 2002-187 (HB 760) amends various insurance-related laws in Chapter 58 to:

- Technically correct the Motor Vehicle Reinsurance Facility law:
  - To conform it to provisions enacted in 2001 to increase the amounts of auto liability insurance coverage, which can be ceded to the Facility, and remove motorcycle liability coverage from the Facility's purview.
  - To modernize the definition of "person" in the Reinsurance Facility Law to specifically show inclusion of trusts, limited liability corporations, and firms and to reword the reference to "agency" in the definition.
- Clarify that the State of North Carolina is eligible to be insured under the Beach and FAIR Plans.
- Enhance the Department of Insurance's (Department) oversight of insurer solvency by:
  - Clarifying that the mandatory five-year examination of insurers by the Commissioner of Insurance (Commissioner) refers to an examination of a insurer's financial records rather than a market conduct examination, which is conducted on an as-needed basis; and by clarifying that a provision in the Examination Law covers "entities" regulated by the Department rather than just "insurers."
  - Adding a fourth basis under which the Department's costs of examining an insurer under the Examination Law shall be reimbursed by the subject insurer: when the Department must examine an insurer's investments and those investments are so complex that it requires outside expertise to properly conduct the examination.
  - Requiring an insurer that has decided to file articles of dissolution with the Secretary of State's Office to file a plan of dissolution for approval by the Commissioner before proceeding with the corporate dissolution.
  - Clarifying that a domestic stock insurance company can neither declare nor pay dividends except from unassigned surplus reflected in financial statements filed with the Commissioner.

- Technically correcting an error in the laws governing foreign investment by domestic insurers.
- Clarifying in Article 9, Reinsurance Intermediaries, that "reinsurer" refers to those licensed by North Carolina's Commissioner rather than just "licensed."
- Reinserting an inadvertent removal of the modifier "Articles 1 through 68 of" into the scope provision of the Asset Protection Act.
- Reducing the unencumbered reserve assets requirements imposed by the Asset Protection Act from a minimum of 110% to 100% of the total of policyholder-related liabilities and minimum capital and surplus requirements.
- Adding another basis for placing an insurer under administrative supervision by the Department: noncompliance with the new dissolution requirements imposed by this enactment.

➢ Modify the managed care external review provisions by:
- Clarifying that the seven-day deadline for an insured to provide the independent review organization (IRO) with supplemental information on the disputed matter runs from the date of receipt of the notice of acceptance for external review rather than the date of the notice; and adding a rebuttable presumption that notice of acceptance for external review is received two days after the notice has been mailed.
- Providing immunity, as is already provided to the Commissioner and the IRO, to a medical professional rendering advice to the Commissioner regarding a claimant's eligibility for an expedited external review.
- Providing that credentialing information provided to the Commissioner by medical professionals contracting with the Department pursuant to the external review provisions is confidential and that such information is not a public record.

➢ Extend, in cases where the 50-day "deemer" provision has not applied, the Commissioner's deadline for issuing an order disapproving the filing, if any, of homeowners' and workers' compensation insurance rate documents to 210 days following the filings rather than the 105 day and 150 days currently allowed for those filings, respectively.

➢ Return North Carolina's HIPAA law regarding specified disease and hospital indemnity policies to its 1997 status, in an effort to encourage the writing of these policies, by eliminating the pre-existing conditions waiver requirements for these policies, which are not required to be portable under existing law. The imposition of those waiver requirements had stifled the issuance of those policies by insurers.

➢ Extend the deadline by which insurers must refund unearned premiums to premium financing companies after termination of certain policies, from 30 days to 90 days.

➢ Amend the laws governing how and how much title insurers, primarily foreign title insurers, must keep in reserve by basing the reserve minimum for foreign title insurers on North Carolina premiums and risks, rather than on all premiums and risks, and by requiring deposits with the Department for the amount of State exposure; and make structural and conforming changes to other provisions on title insurance reserves.

➢ Reduce the interest rate guaranteed for non-forfeiture amounts on annuities from 3% to 1.5%. This provision became effective October 31, 2002 and applies to policies issued on or after that date.

Except as otherwise indicated, the act became effective October 31, 2002. (FF)

Studies

New / Independent Studies / Commissions

State Disability Income Plan Study Commission

S.L. 2002-180, Part XIV (SB 98, Part XIV). See **Employment.**

Referrals to Departments, Agencies, Etc.

Insurance Availability Study

S.L. 2002-185 (HB 1120) establishes a study by the Commissioner of Insurance of issues of availability of homeowners' insurance in the beach and coastal counties and statewide, with a report due to the General Assembly by April 1, 2003.

The act became effective October 31, 2002. (FF)

Chapter 13
Local Government

Erika Churchill (EC), Giles Perry (GP), Barbara Riley (BR), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Billboard Just Comp. Sunset Extended

S.L. 2002-11 (HB 1487). See **Transportation**.

Extend Certain Compliance

S.L. 2002-24 (HB 1584). See **Environment and Natural Resources**.

Certain Counties Delinquent Taxes

S.L. 2002-51 (HB 1533). See **Taxation**.

Nonprofit Water Corporations

S.L. 2002-76 (HB 148) amends Chapter 162A of the General Statutes governing the establishment of Water and Sewer Authorities. Specifically, the act amends G.S. 162A-3(a1) and G.S. 162A-3.1(a1) to allow more than two nonprofit water corporations to be included as part of a water or sewer authority that is organized by three or more political subdivisions. The current law limits participation by nonprofit water corporations to two nonprofit corporations.

The act became effective August 15, 2002. (BR)

Whispering Pines Regulate Golf Carts

S.L. 2002-82 (HB 1686). See **Transportation**.

Filed DD214 Removal – Craven, Nash, Pamlico Counties

S.L. 2002-96 (HB 1627). See **State Government**.

Local Government Reverse Auctions

S.L. 2002-107 (SB 1170), as amended by S.L. 2002-159, Secs. 64(a), (c), and (d) (SB 1217, Secs. 64(a), (c), and (d)), expands the bidding process for certain public contracts to allow for "reverse auctions" and electronic bidding. A "reverse auction," as defined by the act, involves bidders competing real-time to provide goods at the lowest selling price in an open and interactive environment.

Currently, when a political subdivision of the State seeks to purchase apparatus, supplies, materials, and equipment of $90,000 or more, formal public bidding is required. If the purchase is for less than $90,000 but more than $5,000, informal bids may be sought. Formal public

bidding involves advertisement and receipt of sealed paper bids, which are opened in public with the governing body awarding the bid to the lowest responsible bidder. Informal public bidding requires the local unit of government to secure bids and award the contract to the lowest responsible, responsive bidder.

Specifically, the act authorizes political subdivisions to hold reverse auctions and use electronic bidding to obtain competitive bids for purchasing apparatus, supplies, materials or equipment. Under this authorization, a political subdivision can use the State's electronic procurement system to hold its auction, and bids may be revealed during the auction. Electronic bids are subject to the same security, authenticity, and confidentiality requirements as sealed paper bids. Under the act, however, reverse auctions are prohibited for the purchase of construction aggregates. Requirements for bidding on public procurement contracts (such as provisions governing advertising of bids, timeliness of receipt of bids, and awarding standards) not inconsistent with these new methods are still applicable to the bidding process. This provision applies to bidding opportunities advertised on or after the effective date, September 6, 2002.

The act also authorizes the Secretary of Administration to conduct a pilot program for reverse auctions, but only for purchasing supplies and materials for the public school systems.

The act also authorizes the Office of Information Technology Services to use reverse auctions, negotiations, and electronic bidding for the purchasing and contracting of information technology. This provision applies to bidding opportunities advertised on or after the effective date, September 6, 2002.

Additionally, the act modifies the law governing material performance and design specifications that must be submitted in state and local competitive bids for public works contracts. The act allows the alternate bidding of preferred brands only if the specifications containing the preferred brand identify the performance standards that support the preference and such performance standards are approved in advance by the owner in an open meeting. This provision allows the governmental entity to approve preferred brands for use only if: the brands either provide cost savings, maintain or improve the function of any process or system, or both; and the justification identifying these criteria is made available in writing to the public. This provision, as amended by S.L. 2002-159, Secs. 64(a), (c), and (d) becomes effective on January 1, 2003 and applies to bidding opportunities advertised on or after that date. Between the effective date of the act and January 1, 2003, there are no provisions for the bidding of preferred brands as alternate to the base bid.

Except as otherwise stated, the act became effective September 6, 2002. (FF)

Secure Local Revenues

S.L. 2002-120 (HB 1490) as amended by S.L. 2002-159, Sec. 65 (SB 1217, Sec. 65) clarifies that certain shared tax revenues are local revenues and may not be withheld or reduced by the Governor. The shared tax revenues are derived from the levy of the following taxes:

- Beer and wine taxes
- Franchise gross receipts tax
- Piped natural gas tax
- Sales tax on communications
- Powell bill funds

The act also limits the Governor's authority to reduce funds that the General Assembly has "appropriated or otherwise committed to local governments" by amending the Executive Budget Act to require that the Governor exhaust all other sources of revenue first, including any surplus in the treasury at the beginning of the fiscal period. Additionally, the act clarifies that an electric power company that has collected and remitted to the State the annual franchise or privilege tax may not be subject to any additional franchise or privilege tax imposed upon it by any city or county.

S.L. 2002-120 became effective September 24, 2002 and applies prospectively from that date. The State has not waived any sovereign immunity. S.L. 2002-159, Sec. 65 became effective October 11, 2002. (EC)

Local Sales Tax Acceleration

S.L. 2002-123 (SB 1292). See **Taxation**.

Brunswick Co. MV Laws

S.L. 2002-128 (HB 1502). See **Transportation**.

Chapter 14
Property, Trusts, and Estates

Karen Cochrane-Brown (KCB), Wendy Graf Ray (WGR),
Walker Reagan (WR), Steve Rose (SR), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Property

Amend Condominium and Planned Community Acts

S.L. 2002-112 (SB 1154) amends Chapter 47C – Condominium Act and Chapter 47F – North Carolina Planned Community Act to make necessary conforming and codification changes.

The act adds the authority to merge or consolidate condominiums to the list of Chapter 47C provisions that apply to condominium projects created on or before October 1, 1986 because the law governing pre-October 1, 1986 condominiums is silent on this process. This process requires the same number of votes to consolidate or merge as is required to terminate the condominium.

The act also codifies the applicability provision of the Chapter 47F – North Carolina Planned Community Act and conforms the style of the language to the NC Condominium Act from which the North Carolina Planned Community Act was adapted. It also clarifies that the provisions of Chapter 47F do not invalidate existing provisions of planned communities formed prior to January 1, 1999.

The act became effective September 6, 2002. (WR)

Amend Property Tax Laws

S.L. 2002-156 (HB 1523). See **Taxation.**

Estates

Distribution to Unlocated Devisees

S.L. 2002-62 (HB 1538) makes clarifying and conforming changes to the law governing the estate distribution of property in the estate, held by the clerk of court, for known but unlocated devisees or heirs. The act clarifies that G.S. 28A-22-9 only applies to property held by the personal representative. The act also conforms the time period the clerk of court is to hold unclaimed property for known but unlocated devisees or heirs before the clerk is required to deliver the property to the State Treasurer to the time periods set forth in the Unclaimed Property Act in Chapter 116B of the General Statutes. The time for the holding period is changed from five years to one year. The act also updates statutory cross-references.

The act became effective October 1, 2002. (WR)

Clarification of Court Fees

S.L. 2002-135 (HB 1187). See **Criminal Law and Procedure.**

Studies

Legislative Research Commission

Revival of Notice of Settlement Act

S.L. 2002-180, Sec. 2.1D (SB 98, Sec. 2.1D) authorizes the Legislative Research Commission (LRC) to study issues related to the feasibility and desirability of providing a means of recording a notice document prior to a real estate closing that would establish at that time the priority of title documents recorded later in connection with that real estate closing. If the LRC undertakes this study, it shall examine, among other issues, the relationship between the use of notice documents that could fix, in advance of closing, the priority of title documents and the requirements imposed by Chapter 45A of the General Statutes, the Good Funds Settlement Act. The LRC may report its finding and recommendations to the 2003 General Assembly.

This section became effective October 31, 2002. (RZ)

Referrals to Existing Commissions/Committees

Personal Representative's Authority to Take Possession of and Dispose of Real Property

S.L. 2002-180, Sec. 18.1 (SB 98, Sec. 18.1) directs the General Statutes Commission to study and report to the 2003 General Assembly on the question of the personal representative's authority to take possession of and dispose of real property of an estate without an order of the court. The study shall include the issues included in the provisions of the Second Edition of House Bill 716 (Estate law changes) of the 2001 General Assembly, and an examination of the application of G.S. 28A-15-1 (Assets of the estate generally), 28A-15-2 (Title and possession of property), and 32-27(2) (Powers which may be incorporated by reference in trust instrument). The report shall include any recommended legislation necessary to implement the Commission's recommendations.

This section became effective October 31, 2002. (RZ)

Distribution of Property Coming to an Estate after the Estate is Closed

S.L. 2002-180, Sec. 18.2 (SB 98, Sec. 18.2) authorizes the General Statutes Commission to study and report to the 2003 General Assembly on the question of whether North Carolina should allow a method for the distribution of property coming to an estate after the estate is closed without the necessity of reopening the estate. As part of the study, the Commission may consider, among other things, the deed of distribution concept used in South Carolina as codified in the South Carolina General Statutes, Section 62-3-907, et seq., and other related statutes. The Commission may also consider recent statewide situations that have arisen from payments to closed estates arising from the *Bailey* and *Smith/Shaver* cases, and payments made to tobacco producers and allotment holders under Phase II of the Tobacco Master Settlement Agreement. The Commission may consult with the Estate Law Section of the North Carolina Bar Association and the Administrative Office of the Courts, in addition to any other interested persons. The report may include any recommended legislation necessary to implement the Commission's recommendations.

This section became effective October 31, 2002. (RZ)

Chapter 15
Resolutions

Joint Resolutions

Norman Johnson / Retail Merchants 100th Anniv.

Res. 2002-01 (SJR 1110).

Honor Ilene Nelson

Res. 2002-02 (SJR 1422).

Honoring Memory of Luther Henry Jordan Jr.

Res. 2002-03 (SJR 1470).

Honoring Jeremiah Morris / Morrisville 150th Anniv.

Res. 2002-04 (SJR 1229).

Bascom Lunsford / 75th Anniv. / Mt. Dance Folk Fest.

Res. 2002-05 (SJR 1474).

Honor Liston Ramsey

Res. 2002-06 (HJR 1526).

Honoring Myrtle Eleanor "Lulu Belle" Stamey

Res. 2002-07 (SJR 1368).

Memorializing Charles Edward Taylor

Res. 2002-08 (SJR 1473).

Honoring Hugh Stewart Johnson Jr.

Res. 2002-09 (HJR 1675).

Honoring David Webster Bumgardner Jr.

Res. 2002-10 (HJR 1462).

Honoring Linwood Eborn Mercer

Res. 2002-11 (HJR 1778).

Auth. The G.A. to Consider "Amber Alert" Bill

Res. 2002-12 (HJR 1783).

Honoring the Memory of William Joseph Gaston

Res. 2002-13 (SJR 1469).

Honoring Frances Basden

Res. 2002-14 (SJR 1456).

Banking Commissioner Confirmation

Res. 2002-15 (SJR 1303).

Memory J.W. Marsh/Marshville's 125th Anniv.

Res. 2002-16 (SJR 1476).

Honoring Memory of Philip Pittman Godwin Sr.

Res. 2002-17 (HJR 1805).

Adjournment Sine Die

Res. 2002-18 (SJR 1478).

Adjourn Reconvened Session Sine Die

Res. 2002-19 (SJR 1480).

Chapter 16
Senior Citizens

Amy Compeau (AC), Dianna Jessup (DJ), Theresa Matula (TM), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Senior Prescription Drug Program

S.L. 2002-126, Sec. 6.8 (SB 1115, Sec. 6.8) authorizes the Health and Wellness Trust Fund Commission (Commission) to expend up to $3,000,000 of reserved funds from the Health and Wellness Trust Fund to develop and implement a Senior Prescription Drug Access Program (Program) for persons aged 65 years and older. The purpose of the Program is to reduce costs of and improve access to and use of prescription drugs for seniors by:

- Providing assistance with accessing private and public prescription drug assistance programs,
- Making pharmacist evaluators available to review prescriptions to promote compliance and identify potential adverse effects from drug interactions, and
- Using drug software to guide patients through the complexities of all drug coverage options.

Program services will be made available to all seniors, though some seniors may be charged a fee by pharmacist evaluators for prescription reviews. The Commission must include in its annual report to the Joint Legislative Commission on Governmental Operations and to the Legislative Health Care Oversight Committee the use of funds for and activities of the Program and an evaluation of the Program's usage and effectiveness.

This section became effective July 1, 2002. (DJ)

Effective Date Of Long-Term Care Criminal Check For Employment Positions

S.L. 2002-126, Sec. 10.10C (SB 1115, Sec. 10.10C) delays the provision in law that requires employers to conduct a national criminal history record check of employees of nursing homes and adult care homes for employment positions other than those involving direct patient care until no earlier than January 1, 2004.

This section became effective July 1, 2002. (DJ)

Community Alternatives Programs

S.L. 2002-126, Sec. 10.16 (SB 1115, Sec. 10.16) requires the Department of Health and Human Services (Department) to administer all Community Alternatives Program (CAP) waivers in the most economical and efficient manner possible to support, within funds appropriated, the maximum number of persons meeting participation requirements under the waivers, including amending the waivers if necessary to accomplish this objective. The Department was required to submit a report by November 1, 2002 that outlines efficient use of funds appropriated and that demonstrates the participation requirements, payment and service limits, and other administrative actions to support the maximum number of persons to be served in the applicable State fiscal year. The report was to be submitted to the Senate Appropriations Committee on

Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division.

This section also directs that Community Alternatives Program for Disabled Adults (CAP/DA) services shall be provided for the 2002-2003 fiscal year to any eligible person who entered a nursing facility on or before June 1, 2002, notwithstanding the availability of CAP/DA services may be suspended for that fiscal year.

(See also **Studies**.)

This section became effective July 1, 2002. (DJ)

Long-Term Care Reimbursement Methodology

S.L. 2002-126, Sec. 10.19A (SB 1115, Sec. 10.19A) requires the Division of Medical Assistance (DMA) to do the following when establishing a new reimbursement methodology for long-term care services (including nursing facilities, ICF-MRs, and adult care homes):

- Use the latest cost data available;
- Establish reimbursement rates that will allow Medicaid long-term care providers to comply with certification requirements, licensure rules, or other mandated quality or safety standards;
- Consider available data related to long-term care industry costs and losses; and
- Consider the effect on future viability and sustainability of financially vulnerable long-term care providers.

Additionally, DMA and any contract agencies are required to consult with provider organizations including the North Carolina Health Care Facilities Association, the Long-Term Care Facilities Association of North Carolina, the North Carolina Assisted Living Association, the North Carolina Developmental Disabilities Facilities Association, and the North Carolina Association of Non-Profit Homes for the Aging.

This section also requires the Department of Health and Human Services to report on the reimbursement methodology no later than January 1, 2003, 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, 2002. (TM)

State/County Special Assistance

S.L. 2002-126, Sec. 10.36 (SB 1115, Sec. 10.36) rewrites Section 21.44 (d) of S.L. 2001-424 to specify that the maximum monthly rate for residents in adult care home facilities shall be one thousand ninety-one dollars ($1,091) per month per resident (previously, $1,120 per month per resident).

This section became effective July 1, 2002. (TM)

Adult Care Home Resident Assessment Service Program Repealed

S.L. 2002-126, Sec. 10.39 (SB 1115, Sec. 10.39) repeals Section 21.35 of S.L. 2001-424 which required that funds appropriated to the Department of Health and Human Services (Department), Division of Social Services, for adult care home positions in the Department and in county departments of social services 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. Section 21.35 of S.L. 2001-424 had required these personnel to 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, it had required technical assistance to be provided to adult care homes on how to conduct functional assessments, develop care plans, and assist in monitoring the Special Assistance Demonstration Project.

This section became effective July 1, 2002. (TM)

State/County Special Assistance Transfer of Assets Policy

S.L. 2002-126, Sec. 10.41B (SB 1115, Sec. 10.41B) applies Supplemental Security Income (SSI) policy applicable to transfer of assets and estate recovery to applicants for State/County Special Assistance. This section also requires the Department of Health and Human Services (Department) to continue to review conditions on family contributions to the resident's cost of care in an assisted living facility, if that resident qualifies for State/County Special Assistance. The Department must 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 March 1, 2003 regarding its review on family contributions to a resident's cost of care.

The application of federal transfer of assets policy to applicants for State/County Special Assistance became effective November 1, 2002. The remainder of the section became effective July 1, 2002. (AC)

Studies

Legislative Research Commission

LRC Study of Issues Related to Criminal History Record Checks of Employees of Long-Term Care Providers

S.L. 2002-180, Sec. 2.1A (SB 98, Sec. 2.1A) authorizes the Legislative Research Commission (LRC) to study how federal law affects the distribution of national criminal history record check information requested for nursing homes, home care agencies, adult care homes, assisted living facilities, and area mental, developmental disabilities, and substance abuse services authorities, and the problems federal restrictions pose for effective and efficient implementation of State-required criminal record checks. The LRC may report its findings and recommendations to the 2003 General Assembly.

The act became effective October 31, 2002. (DJ)

Referrals to Departments, Agencies, Etc.

Review of Long-Term Care Staffing Requirements

S.L. 2002-126, Sec. 10.3 (SB 1115, Sec. 10.3), as amended by S.L. 2002-159, Sec. 73 (SB 1217, Sec. 73), requires the Office of Long Term Care in the Department of Health and Human Services (Department) to review the staffing requirements in adult day and adult day health programs, including how those requirements compare to the staffing requirements in other states and to the staffing requirements for adult care homes, assisted living facilities, and nursing homes in this State. The Department must report the results of its review, including any recommended changes to existing staffing policies, to the House Appropriations Subcommittee

on Health and Human Services and the Senate Appropriations Committees on Health and Human Services by February 15, 2003 (previously December 1, 2002).

S.L. 2002-126, Sec. 10.3 became effective July 1, 2002. S.L. 2002-159, Sec. 73 became effective October 11, 2002. (DJ)

Report on Services Provided to Older Adults

S.L. 2002-126, Sec. 10.4 (SB 1115, Sec. 10.4) requires the Office of Long Term Care (Office) in the Department of Health and Human Services (Department) to report on services provided to adults (age 60 and older). The report shall include identification of all State agencies that provide services, the resources available to fund these services, and plans to consolidate and reduce administration of the services. The Office must consult with long-term care experts to develop a plan to streamline services for older adults at the local level. The Department shall submit the report by February 1, 2003 to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committees on Health and Human Services and the Fiscal Research Division.

This section became effective July 1, 2002. (DJ)

Adult Care Home Model for Community-Based Services

S.L. 2002-126, Sec. 10.38 (SB 1115, Sec. 10.38) rewrites Section 21.54(b) of S.L. 2001-424 to require the Department of Health and Human Services to submit a final report on the development of 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 on March 1, 2003 (previously March 1, 2002).

This section became effective July 1, 2002. (TM)

Prescription Drug Access/Coordination Study

S.L. 2002-180, Sec. 5.1 (SB 98, Sec. 5.1) requires the Department of Health and Human Services (Department) to study ways the State can coordinate and facilitate public access to public and private free and discount prescription drug programs for senior citizens. In undertaking this study, the Department must consider the coordination and facilitation methods being implemented by other states. On or before January 1, 2003, the Department must report its findings and recommendations, including the possible fiscal impact of any recommendations, to the North Carolina Study Commission on Aging.

This section became effective October 31, 2002. (DJ)

Group Health Insurance for Long-Term Care Staff Study

S.L. 2002-180, Sec. 5.2 (SB 98, Sec. 5.2) requires the Department of Health and Human Services (Department), in consultation with the Department of Insurance, to study ways to establish a group health insurance purchasing arrangement for staff, including paraprofessionals, in residential and nonresidential long-term care facilities and agencies, as described in Recommendation #22 of the Institute of Medicine's Long-Term Care Task Force Final Report of January 2001. The Department is to report its findings and recommendations to the North Carolina Study Commission on Aging on or before January 1, 2003.

This section became effective October 31, 2002. (DJ)

Referrals to Existing Commissions/Committees

Senior Prescription Drug Access Program

S.L. 2002-126, Sec. 6.8(c) (SB 1115, Sec. 6.8(c)) requires the Health and Wellness Trust Fund Commission to include in its annual report required under G.S. 147-86.35 the use of funds for and activities of the Senior Prescription Drug Access Program (Program) and the results of its evaluation. The report shall include data on the number of persons who received services, fees authorized, and the geographic distribution of Program services.

This section became effective July 1, 2002. (TM)

Community Alternatives Programs

S.L. 2002-126, Sec. 10.16(c) (SB 1115, Sec. 10.16(c)) requires the North Carolina Institute of Medicine to conduct a study and recommend ways of improving the CAP/DA program which is administered by the Department of Health and Human Services. The Institute of Medicine shall report its findings and recommendations to the 2003 General Assembly upon its convening.

This section became effective July 1, 2002. (TM)

Heart Disease and Stroke Prevention Task Force

S.L. 2002-126, Sec. 10.45 (SB 1115, Sec. 10.45) rewrites Section 21.95 of S.L. 2001-424 to require the Heart Disease and Stroke Prevention Task Force to submit a report to the Governor and the General Assembly by June 30, 2003, and a report to each subsequent regular legislative session within one week of its convening.

This section became effective July 1, 2002. (TM)

Chapter 17
State Government

Erika Churchill (EC), Karen Cochrane-Brown (KCB), Trina Griffin (TG), Hal Pell (HP), Giles Perry (GSP), Walker Reagan (WR), Barbara Riley (BR), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Agencies and Departments

Increase Efficiency of Mail Service Center

S.L. 2002-126, Sec. 19.2 (SB 1115, Sec. 19.2) requires the Secretary of the Department of Administration to develop a plan for the efficient operation of the mail center to meet the needs of the State agencies, and report on that plan to the Office of State Budget and Management and the General Assembly no later than January 29, 2003.

This section became effective July 1, 2002. (EC)

Petroleum Overcharge Funds Allocation

S.L. 2002-126, Sec. 19.6 (SB 1115, Sec. 19.6) appropriates one million dollars of the funds in the Special Reserve for Oil Overcharge Funds received from the case of *United States v. Exxon* is appropriated to the Department of Health and Human Services for the Weatherization Assistance Program.

This section became effective July 1, 2002. (EC)

Retain Youth Advocacy and Involvement Office

S.L. 2002-126, Sec. 19.7 (SB 1115, Sec. 19.7) requires the Youth Advocacy and Involvement Office to continue in the Department of Administration (Department) through June 30, 2003. The Department is to present a recommendation to the Chairs of the Joint Appropriations Subcommittee on General Government for reorganizing the office by January 31, 2003.

This section became effective July 1, 2002. (EC)

Department of Revenue Vacant Positions

S.L. 2002-126, Sec. 22.3 (SB 1115, Sec. 22.3) directs the Department of Revenue to reclassify vacant positions and allocate up to $1,055,147 for the 2002-2003 fiscal year to increase staff and provide operating costs in the Criminal Investigations Division to expand fraud investigations. The funds may also be used to support the Department of Justice's personnel and operating expenses for legal services related to the expansion of fraud investigations.

This section became effective July 1, 2002. (TG)

Department of Revenue Debt Collection Funds

S.L. 2002-126, Sec. 22.4 (SB 1115, Sec. 22.4) authorizes the Department of Revenue to use funds from the collection assistance fee account during the 2002-2003 fiscal year as follows:

- Up to $200,000 for contractual services related to system changes for managing and
- Filing bankruptcies, and up to $400,000 for identifying delinquent taxpayers.

This section became effective July 1, 2002. (TG)

Department of Revenue Report on Local Tax Administration Expenses

S.L. 2002-126, Sec. 22.5 (SB 1115, Sec. 22.5) requires the Secretary of the Department of Revenue (Department) to report quarterly to the chairs of the Appropriations Committees and Finance Committees of each house of the General Assembly and to the Fiscal Research Division on the Department's expenditures of funds withheld from distributions to local governments to cover its costs of administering local taxes and local programs. The report must itemize expenditures for personnel, operating expenses, and nonrecurring expenses by division and must specify the source of the withheld funds in each case. The report is due 20 days after the end of each quarter.

This section became effective July 1, 2002. (TG)

Department of Revenue Taxpayer Telecommunications Service

S.L. 2002-126, Sec. 22.6 (SB 1115, Sec. 22.6) authorizes the Department of Revenue (Department) to draw up to three million dollars ($3,000,000) through June 30, 2004, from the collection assistance fee account in order to pay for the costs of establishing and equipping a central taxpayer telecommunications service center for collections and assistance and for the costs associated with aligning local field offices with the new center. The Secretary of Revenue was required to present a detailed plan with proposed costs, after consulting with the Joint Legislative Commission on Governmental Operations, by October 31, 2002. Beginning January 1, 2003, and ending on the second quarter following completion of the projects, the Department must report quarterly to the Joint Legislative Commission on Governmental Operations on the use of the funds and the progress of establishing the new center.

This section became effective July 1, 2002. (TG)

Overpayments Audit by the Office of the State Controller

S.L. 2002-126, Sec. 25.1 (SB 1115, Sec. 25.1) requires that, for the 2002-2003 fiscal year, receipts from the collection of inadvertent overpayments by State agencies to vendors as a result of pricing and other administrative errors, and discovered in the mandated audit of such errors, be deposited in a Special Reserve Account. The Office of the State Controller may use $200,000 of the funds for data processing, debt collection, or other information technology initiatives. This section also allows up to $500,000 to be used to continue the State Business Infrastructure Study enacted in the Studies Act of 2001 and moves the interim and final reporting dates for this study to the 2003 Regular Session of the General Assembly and the 2004 Regular Session of the 2003 General Assembly, respectively. This section further requires the State Controller to report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into this Special Reserve Account and the disbursement of that revenue.

This section became effective July 1, 2002. (FF)

Transfer DMV Enforcement to CCPS

S.L. 2002-190 (HB 314), as amended by S.L. 2002-159, Sec. 31.5 (SB 1217, Sec. 31.5), transfers to the Department of Crime Control and Public Safety the personnel and functions of the Department of Transportation Division of Motor Vehicles Enforcement Section for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing, effective January 1, 2003.

The act becomes effective January 1, 2003. (GSP)

Use of Aquarium Funds for Renovation and Expansion Expenses

S.L. 2002-159, Sec. 46 (SB 1217, Sec. 46). See **Environment and Natural Resources.**

Boards and Commissions

Domestic Violence Commission Rulemaking

S.L. 2002-105 (HB 1534) authorizes the Domestic Violence Commission to approve abuser treatment programs to which the court can refer any party in a domestic violence action under Chapter 50B of the General Statutes – Domestic Violence. The act also grants the Domestic Violence Commission the authority to adopt rules for the approval of abuser treatment programs to ensure a consistent.

The act became effective September 6, 2002. (WR)

Extend the 1898 Wilmington Race Riot Commission

S.L. 2002-180, Sec. 2.1C (SB 98, Sec. 2.1C) extends from two to four years the length of the 1898 Wilmington Race Riot Commission (Commission). As the result of this legislation, the Commission is set to terminate on December 31, 2004. The Commission, located in the Department of Cultural Resources, was created pursuant to legislation enacted during the 2000 General Assembly. It is responsible for developing a historical record of the 1898 Wilmington Race Riot by gathering information, such as oral testimony from descendants of those affected by the riot and others, and by accurately identifying information having historical significance to the riot. The Commission consists of 13 members each serving a four-year term.

This section became effective October 31, 2002. (TG)

Building Codes, Inspection, Construction

Joint Legislative Oversight Committee on Capital Improvements Established

S.L. 2002-126, Sec. 29.3 (SB 1115, Sec. 29.3) amends Chapter 120 of the General Statutes adding a new Article 29 establishing the Joint Legislative Oversight Committee on Capital Improvements. The Committee will consist of sixteen members of the General Assembly, eight appointed by the Speaker of the House and eight appointed by the President Pro Tempore of the Senate. The Committee shall examine, on a continuing basis, the capital improvements approved

and undertaken for State facilities, have oversight of the Capital Improvements Planning Act, and consider the State six-year capital improvement plan developed pursuant to G.S. 143-34.45. The Committee may make interim reports to the General Assembly and such reports may contain recommended legislation.

The act became effective July 1, 2002. (BR)

UNC Nonappropriated Capital

S.L. 2002-173 (HB 1726) authorizes the financing and construction of numerous projects by the University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund. Generally, revenue bonds may be issued to build educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. Special obligation bonds may be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions. The bonds are payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. Neither revenue bonds nor special obligation bonds are payable from tax revenues.

The act sets out the following self-liquidating projects that the Board of Governors plans to finance with revenue and/or special obligation bonds and their costs:

➢ Appalachian State University	
Residence Halls Comprehensive Renovations	$12,000,000
➢ East Carolina University	
Clement Residence Hall Renovation	2,833,000
West End Dining Hall Supplement	3,357,000
➢ Elizabeth City State University	
Renovation of Campus Dining Facility	1,178,000
➢ Fayetteville State University	
Athletic Facilities Improvements	2,766,550
➢ North Carolina State University	
Soccer, Track, and Softball Complex	4,500,000
Fire Safety – Residence Halls	1,300,000
University Apartments for Upperclassmen Housing	77,260,700
Parking Expansion Projects	1,000,000
➢ The University of North Carolina at Chapel Hill	
208 West Franklin Street	4,000,000
Kenan, McIver, Alderman Residence Hall Renovations	10,500,000
Residence College Phase II	46,500,000
School of Medicine Research Facilities	77,700,000
Ramshead Development	12,800,000
Hot Water Replacement Phase II	5,000,000
➢ University of North Carolina at Charlotte	
Residence Hall Phase VIII	22,000,000
Brocker Health Center	7,150,000
Parking Deck G	8,300,000
➢ The University of North Carolina at Pembroke	
Surface Parking Lot	275,000
University Center Expansion	3,000,000
Improvements to Student Recreation Facilities	600,000
➢ The University of North Carolina at Wilmington	
University Union Building Expansion and Renovation (Supplemental Funding)	22,400,000

Parking – 650 Spaces	3,000,000
Wagoner Hall Renovations	4,000,000
Residence Hall Renovations	6,000,000
➢ Western Carolina University	
Hospitality Management Center	8,000,000
Student Recreation Center	11,500,000
TOTAL	**$358,920,250**

The act sets out seven additional capital improvements projects and authorizes the financing of some of the costs of those projects with revenue and/or special obligation bonds. These additional projects were previously authorized for construction in S.L. 2000-3 as part of the earlier general obligation bond program. The act also authorizes the Director of the Budget, at the request of the Board of Governors, to authorize cost increases or decreases, or changes in the method of financing for the projects authorized by the act. However, the Director of the Budget is required to consult with the Joint Legislative Commission on Governmental Operations when determining whether to authorize a change in cost or funding.

The act became effective October 11, 2002. (CA, TG)

Corrections

Safekeeper Cost Reimbursement

S.L. 2002-126, Sec. 17.1 (SB 1115, Sec. 17.1) amends G.S. 162-39(c), which provides for counties to pay the State for maintaining prisoners who have been transferred from county jails or prison units to the Department of Correction. Previous law had provided that counties were not required to reimburse the State for a maintaining a prisoner who was a resident of another State or county at the time he committed the crime for which he was imprisoned. This section deletes the "non-resident" provision; counties must now reimburse the State regardless of the transferred prisoner's State or county residency.

This section became effective July 1, 2002. (HP)

Parole Commission Reporting

S.L. 2002-126, Sec. 17.3 (SB 1115, Sec. 17.3) amends previous budget provisions for reporting by the Post-Release Supervision and Parole Commission to the designated legislative committees. Past reporting was required on a quarterly basis; the new law provides that the reports shall be made by January 15 and July 15 of each year. The report will now include the type of parole for those inmates who were paroled. The law no longer requires that the report include a list of all inmates paroled or released by category of parole, or each inmate's offense and custody classification at the time of the parole or release.

This section became effective July 1, 2002. (HP)

Premium Pay to Department of Correction Staff

S.L. 2002-126, Sec. 17.4 (SB 1115, Sec. 17.4) allows the use of appropriated funds for Department of Correction (Department) security staff working on holidays for pay that exceeds standard holiday pay by up to twenty-five percent (25%). Funds are authorized to security staff for weekend shift pay that exceeds standard weekend shift pay by up to ten percent (10%). The Department is required to convert prisons from three eight-hour shifts to two 12-hour shifts, wherever practical. The Department is required to report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2003 on

the benefits to recruitment and retention of correctional staff as a result of the premium pay, and also on the status of converting to 12-hour shifts.

This section became effective July 1, 2002. (HP)

Community Work Crews

S.L. 2002-126, Sec. 17.6 (SB 1115, Sec. 17.6) directs the Department of Correction (Department) to implement a reduction in inmate community work crews systemwide. In addition, the Department is required to:

- Use up to 39 work crews for litter control projects.
- Identify locations where the number of inmate work crews is being reduced or diverted to perform litter control for the Department of Transportation and, to the extent possible, arrange for community service work program placements so that the affected work projects for State and local governments can be maintained. The Department is to report by March 1, 2003 to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on all projects formerly performed by inmate work crews that have been continued through the community service work program.
- Identify and report all inmate labor supplied to public agencies for which it does not receive reimbursement and alternative methods for charging public agencies for the costs of inmate labor and the supervision of that labor. The report, due by March 1, 2003 to the Chairs of the Senate and House Appropriation Subcommittees on Justice and Public Safety, must include the type of labor performed, the number of security positions assigned for that type of labor, and the actual costs of providing the labor and supervision.

This section became effective July 1, 2002. (HP)

Substance Abuse Program Staff Reduction

S.L. 2002-126, Sec. 17.7 (SB 1115, Sec. 17.7) eliminates 14 positions in the Department of Corrections' Substance Abuse Program, including a Program Director responsible for managing and implementing the inpatient treatment program, administrators, assistants, and secretarial staff. This provision also deletes the requirement that approximately 25 offenders enter the program in each unit on a weekly basis.

This section became effective July 1, 2002. (HP)

Use of Closed Prison Facilities

S.L. 2002-126, Sec. 17.8 (SB 1115, Sec. 17.8) amends prior budget provisions relating to the use of closed prison facilities. Prior law provided that the Department of Corrections (Department) could consider converting units recommended for closing from medium security to minimum security facilities. The new law provides that the Department may consider converting the units from any security level to any other security level.

This section became effective July 1, 2002. (HP)

Electronic Monitoring Costs

S.L. 2002-126, Sec. 17.10 (SB 1115, Sec. 17.10) relates to changes in the electronic monitoring program. It provides that the actual costs of providing electronic monitoring of pretrial or sentenced offenders shall be reimbursed to the Department of Corrections (Department) by the State or local agency requesting the service. It also requires the

Department to report by March 1, 2003 to the Chairs of the Senate and House Appropriations Committee and Subcommittees on Justice and Public Safety on efforts to increase the use of electronic monitoring as an alternative to incarceration for probation violators. The report must also document the geographical distribution of electronic monitoring use.

This section became effective July 1, 2002. (HP)

Conversion of Contracted Medical Positions

S.L. 2002-126, Sec. 17.14 (SB 1115, Sec. 17.14) allows for the conversion of Department of Correction (Department) contract medical positions to permanent State medical positions at correctional facilities. The Department must be able to document that the total savings generated will exceed the costs for each facility. The Department is required to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on all conversions. The report must include the type of position, location, and the savings generated at each correctional facility.

This section became effective July 1, 2002. (HP)

Eliminate Impact Program

S.L. 2002-126, Sec. 17.18 (SB 1115, Sec. 17.18) provides for the elimination of the IMPACT boot camp program, effective August 15, 2002. The act reallocates a portion of the funds previously appropriated for IMPACT to fund 12 inmate community work crews: one crew each at Marion, Rutherford, Catawba, and Caldwell correctional facilities, and two crews each at Southern, Anson, Robeson, and Sanford correctional facilities.

This section became effective August 15, 2002. (HP)

Courts and Justice

Restrict District Court Mandatory Arbitration

S.L. 2002-126, Sec. 14.3 (SB 1115, Sec. 14.3) provides that mandatory arbitration may not be employed in actions in which the sole claim is an action on an account, including appeals from magistrates on such actions.

This section became effective October 1, 2002, and applies to actions and cases filed on or after that date. (TG)

Drug Treatment Court Program

S.L. 2002-126, Sec. 14.8 (SB 1115, Sec. 14.8) declares that it is the intent of the General Assembly that State Drug Treatment Court funds not be used to fund case manager positions when those services can be reasonably provided by the Treatment Alternatives to Street Crime Program (Program) in the Department of Health and Human Services or by other existing resources. It requires the Program to identify areas of potential cost savings in the local programs as the result of reducing case manager positions. It further requires the Program to report by February 1, 2003 to the Chairs of the Appropriations Committees on the savings identified.

This section became effective July 1, 2002. (TG)

Appellate Courts Printing and Computer Operations Fund

S.L. 2002-126, Sec. 14.12 (SB 1115, Sec. 14.12) establishes the Appellate Courts Printing and Computer Operations Fund within the Judicial Department as a nonreverting, interest-bearing special revenue account. All moneys collected through charges to litigants for the reproduction of appellate records and briefs shall be remitted to the State Treasurer and held in this Fund. Moneys in the Fund shall be used to support the print shop operations of the Supreme Court and Court of Appeals, including personnel, maintenance, and capital costs. The Judicial Department must report to the Chairs of both the House and Senate Appropriations Subcommittees on Justice and Public Safety by January 1 of each year on all receipts and expenditures of the Fund.

This section became effective July 1, 2002. (TG)

Offender Supervision Compact/Transfer

S.L. 2002-166 (HB 1641). See **Criminal Law and Procedure.**

Indian Affairs

Occaneechi Band of the Saponi Nation Added to Indian Affairs Commission

S.L. 2002-126, Sec. 19.1A (SB 1115, Sec. 19.1A) adds the Occaneechi Band of the Saponi Nation to the North Carolina State Commission on Indian Affairs. The initial appointment to the Commission will expire June 30, 2005.

This section became effective November 1, 2002. (EC)

Licensure

Locksmith Licensure Effective Date

S.L. 2002-63 (HB 1552) delays the effective date of the Locksmith Licensure Act (S.L. 2001-369) and gives the Locksmith Licensing Board (Board) additional time to adopt temporary rules. The Locksmith Licensure Act (act) required all persons performing locksmith services in the State to be licensed. The act established the Board and established qualifications and fees for licensure. The sections of the act establishing the Board and the Board's powers and duties became effective August 16, 2001 in order to allow the Board to begin adopting rules for the licensure and regulation of locksmiths. The sections of the act requiring licensure, including the section that provided that performing locksmith services without a license is a Class 3 misdemeanor, was scheduled to become effective July 1, 2002. Because of delays in appointing the Board, the Board was unable to adopt necessary rules for licensure and procedures for "grandfathering in" locksmiths who had been in practice for at least two consecutive years. However, on July 1, 2002, any person who performed locksmith services was required to be licensed by the Board. If the person was not licensed, he or she would have been guilty of a Class 3 misdemeanor, thus it was necessary to delay the effective of licensure. The act delays that effective date until January 1, 2003 and gives the Board additional time to adopt temporary rules to implement the act. (MS)

Exempt Locksmith Licensing Board Initial Fees from Joint Legislative Commission on Governmental Operations Prior Consultation

S.L. 2002-159, Sec. 88 (SB 1217, Sec. 88) grants an exemption to the North Carolina Locksmith Licensing Board (Board) from the requirement that its initial fees be subject to consultation with the Joint Legislative Commission on Governmental Operations (Commission) before adoption. This provision requires the Board to report the amount and purpose of its initial fees to the Commission prior the Commission's first meeting following the adoption of the initial fees.

This section became effective October 11, 2002. (WR)

Certain Occupational Licensing Board Changes

S.L. 2002-168 (SB 1281) makes various changes to the laws governing occupational licensing boards as follows:

Occupational Licensing Boards' Insurance. Occupational licensing boards are subject to paying negligence claims under the State Tort Claims Act and are also required to defend their employees from liability. The act authorizes occupational licensing boards to purchase commercial insurance to cover their risks, including their liability for negligence claims up to $500,000 per incident under the State Tort Claims Act and the Duty to Defend State Employees Act. The act also clarifies that if an occupational licensing board purchases commercial insurance, any lapsed salary funds from the board are not subject to contribution into the State's excess liability insurance pool.

This section became effective October 1, 2002.

Real Estate Commission. The act authorizes the Real Estate Commission to do the following:

- Acquire and otherwise deal with real property in the same manner as a private person, subject to approval by the Governor and Council of State.
- Claim copyright to written materials it creates.
- Charge fees for its publications and programs.
- Shortens the grace period for lapsed licenses from 12 months to six months and sets the fee for a lapsed license at $55.00.
- Notify applicants who have failed an exam of the individuals exam score.
- Impose reasonable conditions or limitations upon a licensee's license, registration, or approval.

This section became effective October 1, 2002.

Board of Landscape Architects. Allows the Board of Landscape Architects to retain private counsel subject to approval from the Attorney General prior to employing the attorney.

This section became effective October 1, 2002.

Professional Employer Organizations (PEO) Registration. The act also requires that "professional employer organizations" register with the Department of Insurance before doing business in North Carolina.

Background. The PEO industry is relatively new and is also known as the "employee leasing industry." A PEO establishes a contractual relationship with a client company. Under the contract, a co-employment relationship is created between the company, the PEO, and the workers of the company. The PEO becomes the employer of the company's employees and assumes the obligations related to human resources, workers' compensation, payroll, labor law compliance, employment taxes, and employee benefits. The client company maintains responsibility for the day-to-day management of employees and workplace supervision as well as all "hire and fire" decisions and promotions. Currently in North Carolina, general contract law

and general employment law cover leased employment arrangements, but there is no law specifically covering the PEO industry.

PEO Registration. First, the act defines "professional employer organization" and "professional employer services." A "professional employer organization" is defined as a person offering "professional employer services." "Professional employer services" are "arrangements by which employees of a registrant are assigned to work at a client company and in which employment responsibilities are shared by the registrant and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal, and a majority of the workforce of a client company ... consists of assigned employees of the registrant." Employee leasing services do not include services that provide temporary employees or independent contractors, personnel placement services, managed services, payroll services that do not involve employee staffing or leasing, or similar groups.

The act then requires that all PEO's register with the Department of Insurance (Department) and provide certain information. The fee to register is $250.00. Furthermore, PEO's are prohibited from offering employee leasing services, or using certain titles without being registered; misrepresenting the person's licensure status; or giving materially false or forged evidence to the Department in connection with obtaining a registration. Any person who commits a prohibited act is guilty of a class H felony. The act also requires the Department to report to the 2005 Session on the implementation and enforcement of the registration.

The registration requirements are effective January 1, 2003; however, PEO's currently operating in the State have up to 180 days to become registered. PEO's not operating in this State on January 1, 2003 must register prior to doing business in the State. (MS)

Interpreter/Transliterator Licensure

S.L. 2002-182 (HB 1313). See **Health and Human Services.**

Military and Veterans' Affairs

Filed DD214 Removal

S.L. 2002-96 (HB 1627), as amended by S.L. 2002-162, Sec. 1.1 (HB 1245, Sec. 1.1) and by S.L. 2002-159, Sec. 61.5 (SB 1217, Sec. 61.5), allows designated persons to request that previously filed military discharge records be removed from the register of deeds' files. Current law allows any person to request a certified copy of filed discharge records. Concern over the potential for identity theft was the impetus behind this legislation. Several matters of identifying information, including the veteran's date of birth and social security number, are included on military records. The record removal is without fee, and written notice is provided to the requesting party that the removal is permanent, and that only an annotated archived copy will remain. If an unauthorized person makes a request to review a record, the register of deeds reviews the index of archived copies to determine if a removal annotation has been made. If the record is an annotated record, then the person requesting the document will receive a version of the record that has had personal information, included the social security number, redacted from it. The register of deeds may charge a fee for this service. All documents sent in response to requests for certified copies of discharge papers will have the personal information redacted.

The act became effective in Craven, Nash, and Pamlico counties on August 28, 2002. The act will become effective in all other counties of the State on July 1, 2003, but may be implemented earlier by any county register of deeds. (HP)

NCDL/Selective Service Registration

S.L. 2002-162, Secs. 1-2 (HB 1245, Secs. 1-2). See **Transportation.**

Purchase and Contracts

Exempt Arboretum from Umstead Act

S.L. 2002-109 (SB 1441) amends the provisions of the Umstead Act, G.S.66-58. The Umstead Act makes it unlawful for any State agency to engage in the sale of merchandise, operate eating establishments or provide services customarily rendered by private enterprise. S.L. 2002-109 adds to the list of exemptions from the prohibition, the operation of gift shops, snack bars and food service facilities physically connected to any of the University of North Carolina's public exhibition spaces, including the North Carolina Arboretum. The profits from the operation of such gift shops and snack bars must be used to support the operation of the public exhibition space.

The act became effective September 6, 2002. (BR)

Amending Public Contract Bidding Laws

S.L. 2002-159, Sec. 64 (SB 1217, Sec. 64) clarifies that the provisions in S.L. 2002-107 (SB 1170) allowing for political subdivisions of the State and the Office of Information Technology Services to use reverse auctions and electronic bidding, applies to bidding opportunities advertised on or after the effective date, September 6, 2002.

These sections also amend G.S. 133-3, governing material performance and design specifications that must be submitted in state and local competitive bids for public works contracts, as modified by S.L. 2002-107 (SB 1170), to allow the alternate bidding of preferred brands only if the specifications containing the preferred brand identify the performance standards that support the preference and the performance standards are approved in advance by the owner in an open meeting. The provision allows cities, counties, and the Office of State Construction to approve preferred brands for use only if: the brands either provide cost savings, maintain or improve the function of any process or system, or both; and the justification identifying these criteria is made available in writing to the public. This section becomes effective on January 1, 2003 and applies to bidding opportunities advertised on or after that date. Between September 6, 2002, and January 1, 2003, by operation of the effective dates of the amendments to G.S. 133-3, there are no provisions for the bidding of preferred brands as alternate to the base bid.

Except as otherwise stated, these sections became effective October 11, 2002. (FF)

State Energy Savings Contracts

S.L. 2002-161 (HB 623) authorizes State agencies to enter into guaranteed energy savings contracts for energy conservation measures, the cost of which would be paid by the resulting energy savings. The act also authorizes the State to enter into up to $50 million of installment finance contracts to finance the guaranteed energy savings measures.

The act amends the former law, which authorized local governments to enter into guaranteed energy savings contracts, by also allowing all State agencies to enter into the same types of agreements. The act authorizes the State Energy Office to adopt rules for the evaluation by State agencies of these contracts. The act requires State agencies to report periodically to the State Energy Office on energy savings contracts being utilized, and the State

Energy Office is to report to the Joint Legislative Commission on Governmental Operations and the Local Government Commission on savings arising from these contracts. The act also specifies how work performed under this Article is to be inspected for building code compliance.

The act provides authority for State agencies to incur debt through a form of installment sales contract for energy conservation measures authorized by the act. The aggregate principal amount payable by the State under these contracts is limited to $50 million. The debt is secured by a lien on or a security interest in any part of the property with respect to which an energy conservation measure is undertaken and/or the land upon which the property is or will be located. There would be no pledge of the State's faith and credit or taxing power. If the State defaulted on its repayments, no deficiency judgment could be rendered against the State, but the property that serves as security could be disposed of to generate funds to satisfy the debt. Under the act, the funds could be borrowed from the vendor with whom the agency contracts, or could be borrowed through the sale of certificates of participation (COPs). COPs are certificates that evidence that assignment of the rights to receive these installment payments; and it is through the sale of COPs to investors that capital is raised to acquire or construct the item being financed. Before a guaranteed energy savings contract can be entered into, the Office of State Budget and Management must certify that resources are expected to be available to pay the amounts due under the contract. The Council of State must also approve the contract by resolution that sets out the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 12 years. The State Treasurer also must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State.

The act becomes effective January 1, 2003, and applies to contracts entered into on or after that date. (WR)

Miscellaneous

Firearm Regulation Amendments

S.L. 2002-77 (HB 622) provides that the authority to bring suit and the right to recover against a firearms manufacturer or seller for damages resulting from the lawful manufacture or sale of firearms or ammunition is reserved exclusively to the State, and may be exercised only by the Attorney General on behalf of the State. For purposes of suits brought by the State, the act declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and is not a nuisance in and of itself, and that it is the unlawful use of firearms and ammunition, rather than the lawful design, marketing, manufacture, distribution, sale or transfer which results in injuries arising from their unlawful use. Finally, the act specifically provides that a local government may still bring an action against a firearms dealer or manufacturer for breach of contract or warranty with regard to firearms or ammunition purchased by the local government.

The act became effective August 15, 2002 and applies to any action pending or filed on or after that date. (TG)

Conforming APA Amendments

S.L. 2002-97 (SB 1224) implements recommendations of the Joint Legislative Administrative Procedure Oversight Committee. It authorizes the Office of Administrative Hearings (OAH) to provide access to the North Carolina Register and Administrative Code over the Internet at no charge, providing for the distribution of fewer printed copies of the documents. The act also makes several amendments to the Administrative Procedure Act to conform to a

statutory requirement that agencies consult with the Joint Legislative Commission on Governmental Operations before establishing or increasing a fee. A permanent rule that establishes or increases a fee cannot go into effect if it has not been presented to Governmental Operations, and before such rule can be included in the Administrative Code, the agency must notify OAH that it has consulted with Governmental Operations. With regard to temporary rules, an agency must submit a statement that it has consulted with Governmental Operations as a part of its written statement of need for a temporary rule. If the agency has not consulted with Governmental Operations, the Codifier of Rules cannot enter the temporary rule into the Administrative Code.

The act became effective August 29, 2002. (BC)

Clarify Tobacco Settlement Payments for Medicaid and Economic Incentives

S.L. 2002-159, Sec. 69 (SB 1217, Sec. 69) amends Section 2.2(h) of S.L. 2002-126, to clarify that moneys of the Tobacco Trust Fund and the Health and Wellness Trust Fund appropriated for Medicaid and economic incentive purposes in the 2002 Budget Bill are to only come from Master Settlement Agreement settlement payments added to each trust fund during the 2002-2003 fiscal year.

This section became effective October 11, 2002. (WR)

Use of State Property/Blount Street Historic District

S.L. 2002-186 (SB 347) directs the North Carolina Capital Planning Commission (Commission), in consultation with the State Property Office in the Department of Administration and the Department of Cultural Resources, to examine the State-owned properties within the area bordered by North Person Street, Lane Street, North Wilmington Street, and Peace Street to determine whether any of the properties no longer have any use to the State or should for any other reason be disposed of by the State. The Commission is directed to report its findings and recommendations, including any recommended legislation, to the Joint Legislative Commission on Governmental Operations on or before January 15, 2003.

The act became effective October 31, 2002. (GSP)

Studies

Legislative Research Commission

Earlier Convening Date for General Assembly Study

S.L. 2002-180, Sec. 2.1(4)(c) (SB 98, Sec. 2.1(4)(c)) authorizes the Legislative Research Commission to study whether the General Assembly should convene earlier in order to expedite the organization of the body.

This section became effective October 31, 2002. (TG)

Establishment of a Mounted Horse/Caisson Patrol Unit Study

S.L. 2002-180, Sec. 2.1(4)(d) (SB 98, Sec. 2.1(4)(d)) authorizes the Legislative Research Commission (Commission) to study the establishment of a Mounted Horse/Caisson Patrol Unit. While the act does not direct or authorize the Commission to study any specific issues related to

this patrol unit, the bill from which this concept originated (HB 1766) suggests that the Commission may wish to consider the feasibility of the unit functioning as a horse-drawn caisson procession at the funeral services of certain law enforcement personnel and other fallen heroes and heroines. The Commission may also wish to consider under whose command the Unit would fall, the types of equipment and facilities that are necessary to maintain the Unit, and methods for funding the Unit.

This section became effective October 31, 2002. (TG)

Study State Personnel System Statutes

S.L. 2002-180, Sec. 2.1B (SB 98, Sec. 2.1B). See **Employment.**

Engineering and Landscape Architecture Study

S.L. 2002-180, Sec. 2.1C (SB 98, Sec. 2.1C) authorizes the Legislative Research Commission to study the relationship between the professions of engineering and landscape architecture. The study shall include an examination of:

- The qualifications and education of landscape architects.
- The definition of landscape architecture in G.S. 89A-1(3).
- The areas of overlap or common practice regarding the scope of the professions of engineering and landscape architecture.
- The governance and procedures of the State Board of Examiners for Engineers and Surveyors and the Board of Landscape Architects in their respective roles in protecting the public health, safety, and welfare of the people of the State.

Independent Studies/Commissions

Legislative Study Commission on Companion Animals

S.L. 2002-180, Part VI (SB 98, Part VI) creates the Legislative Study Commission on Companion Animals (Commission) for the purpose of reviewing the laws regarding the treatment of companion animals. The Commission shall consist of 16 members, including the following to be appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives:

- An employee of an animal shelter.
- A local governmental official interested in the welfare of companion animals.
- Two persons who are companion animal advocates.
- A representative of the North Carolina Veterinary Medical Association.
- A small animal veterinary practitioner.

In conducting the study, the Commission shall consider the following:

- The operation of public and private animal shelters, including the conditions of shelters, size, staff, budgets, euthanasia processes and procedures, and public and private adoption programs.
- Ways to reduce the unwanted companion animal population through spay-neuter programs, including an analysis of current programs, ways to increase the effectiveness of programs, and the cost savings associated with reducing the companion animal population through these programs.
- Minimum standards and responsibilities required of companion animal owners.
- The need and feasibility of licensing commercial breeders and kennel operators.

The Commission may make an interim report to the 2003 General Assembly not later than its convening, and shall make its final report to the 2004 Regular Session of the 2003

General Assembly upon its convening. The Commission will terminate the earlier of the filing of its final report or upon the convening of the 2004 Regular Session of the 2003 General Assembly.

This part became effective October 31, 2002. (TG)

Referrals to Departments, Agencies, etc.

Prison Chaplain Study

S.L. 2002-126, Sec. 17.17 (SB 1115, Sec. 17.17) requires the Department of Correction (Department) to study the feasibility of converting its prison chaplain program into a community-based program. The program would emphasize the use of volunteers and community-based funding, and allow for contracting of chaplain services where volunteers or community-based funding was not available. The Department is required to report the results of the study, including an analysis of cost savings, to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by March 1, 2003.

The act became effective on July 1, 2002. (HP)

Museum Admission Fee Study

S.L. 2002-126, Sec. 21.2 (SB 1115, Sec. 21.2), as amended by S.L. 2002-159, Sec. 81 (SB 1217, Sec. 81), directs the Office of State Budget and Management to study the feasibility of charging an admission fee to the State's museums and other similar facilities open to the public. The Office of State Budget and Management shall conduct the study in consultation with the Fiscal Research Division of the Legislative Services Office. The study must be completed and reported to the Chairs of both the House and Senate Appropriations Committees by February 1, 2003.

This section became effective July 1, 2002. (TG)

Chapter 18
Taxation

Cindy Avrette (CA), Trina Griffin (TG), Martha Harris (MH),
Canaan Huie (CH), Martha Walston (MW), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Tax[1]

Remove Scrap Tire Tax Sunset

S.L. 2002-10 (HB 1578) removes the sunset on a 1993 provision that increased the scrap tire disposal tax from 1% to 2% for tires for cars, vans, and pick-up trucks, as recommended by the Environmental Review Commission. Because none of the tax proceeds go to the General Fund, the act has no impact on the General Fund. Removing the sunset is expected to generate about $5.35 million annually that would have otherwise been eliminated by the sunset on the higher tax rate. The tax proceeds are distributed among the Scrap Tire Disposal Account, the Solid Waste Management Trust Account, and counties.

The act became effective June 27, 2002. (MH)

Conform Mobile Telecommunications Sourcing

S.L. 2002-16 (HB 1521) conforms State sales tax law to the federal Mobile Telecommunications Sourcing Act and codifies the sourcing rules for other types of telecommunications, as recommended by the Revenue Laws Study Committee. While this legislation may redistribute tax revenue between jurisdictions because of changes in sourcing, the total amount available to local governments will not change.

Most of the act became effective for taxable services reflected on bills dated on or after August 1, 2002. This effective date corresponds with the effective date of the federal Mobile Telecommunications Sourcing Act. Two provisions are delayed until January 1, 2004: a new sourcing principle for private lines and a requirement that postpaid calling service be sourced based on the origination point of the signal. (MH)

Certain Counties Delinquent Taxes

S.L. 2002-51 (HB 1533) authorizes the county commissioners in Bertie, Clay, Durham, Henderson, Hertford, Macon, Northampton, Polk, Rutherford, and Transylvania 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. In addition, the act allows the governing body of Stokes County or any of its municipalities to provide a schedule of discounts for property taxes paid prior to November 1, 2002.

The act became effective July 30, 2002. (CH)

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[1] For a more detailed explanation of the tax law changes, see the document "*2002 Tax Law Changes.*" The document can be found in the Legislative Library, located in Room 500 of the Legislative Office Building.

Revenue Laws Technical Changes

S.L. 2002-72 (SB 1160) makes numerous technical and clarifying changes to the revenue laws and related statutes. It also makes one substantive change: it allows a one-time exception to the requirement that a letter of commitment be signed before year's end. This change has an annual cost to the General Fund of $725,000 through the 2006-2007 fiscal year and an annual cost of $25,000 for three years thereafter. The remainder of the act has no fiscal impact.

Except for the section of the act that conforms the payment date for the insurance regulatory charge on HMOs to the date they file their premium tax returns, and which becomes effective for taxable years beginning on or after January 1, 2003, the act became effective August 12, 2002. (CH)

Housing Tax Credit Changes/Estate Tax Changes

S.L. 2002-87 (SB 1416) modifies the low-income housing tax credit to make it simpler and more efficient. North Carolina authorized a State income tax credit equal to a percentage of the developer's federal tax credit for low-income housing constructed in North Carolina in 1999. A project developer sells the tax credits to receive funds to finance the project. Developers indicate that the State tax credit sells for no more than 45 cents on the dollar. During the 2002 session, the General Assembly became aware of several concerns with the low-income housing tax credit:

- The sale of a dollar tax credit for less than 45 cents is an inefficient use of State tax expenditures.
- The process of selling the tax credits is complex. It involves finding investors, negotiating prices, and completing legal documents.
- The pool of investors interested in purchasing the credit is limited and is diminishing.

S.L. 2002-87 addresses these concerns in two ways:

- To address the short-term problem of utilizing the tax credits allocated to developers, the act reduces the tax basis required of a purchaser from 100% to 40%.
- To address the long-term problem of the complexity and inefficiency of the credit, the act converts the State credit, which is sold to investors, to a refundable credit, received directly by the owner and invested directly in the project. The modification saves the State significant revenue over a 5-year period while maintaining the same level of investment in low-income housing developments.

The low-income housing tax credit changes become effective beginning with the 2002 tax year for the existing credit and in 2003 for buildings that are awarded a federal credit allocation on or after January 1, 2003.

S.L. 2002-87 also modifies the formula for calculating estate tax on estates with property in more than one state from a net value calculation to a gross value calculation. This change makes North Carolina's treatment on this issue like the majority of states that have estate taxes. The change has little or no impact on the General Fund and becomes effective for the estates of decedents dying on or after January 1, 2002. (MH)

Extend Qualified Business Venture Tax Credit

S.L. 2002-99 (HB 1520) extends the tax credit on qualified business investments and the State ports tax credit from January 1, 2003 to January 1, 2004, and revises the definition of "qualified grantee business" to alleviate a constitutional concern by replacing specific named entities with general descriptions of entities. This change to the definition of "qualified grantee business" is effective January 1, 2003. The amount of the tax credit on qualified business investments that is given each year is capped at $6 million. Because requests for credits have exceeded this cap for four out of the last five years, it is likely that the $6 million annual cost of

the program will continue until its sunset in 2004. The General Fund impact due to the extension of this tax credit will occur in the 2003-2004 fiscal year because the investments made in 2003 will be awarded credits on returns filed in the spring of 2004. The extension of the State Ports Authority tax credit is estimated to cost the General Fund $650,000 in the 2003-2004 fiscal year.

The act also clarifies that the North Carolina State Ports Authority has fee-setting authority for its rates and tariffs, gives the Authority guidelines to use in setting those fees, requires the Authority to report to the Joint Legislative Commission on Governmental Operations no later than 30 days after it establishes or increases a fee, and exempts the Authority's fee-setting from the rule-making portion of the Administrative Procedure Act. The changes to the fee-setting authority became effective August 29, 2002. (MW)

Amend Pollution Abatement Tax Exclusion

S.L. 2002-104 (SB 1253) provides that an animal waste management system may not qualify for property tax exclusion as a pollution control device unless it eliminates or substantially eliminates certain discharges, emissions, and contamination. The act also requires the Revenue Laws Study Committee to study property tax exemptions for pollution control equipment. The Environmental Review Commission recommended the legislation. The state General Fund is not affected. The legislation will affect revenue from the property tax base in each county. There are currently no exclusions that have been granted to facilities, thus there are no changes in current county revenues. However, had the legislation not been enacted, potential revenue losses would have been split among counties based on the number of animal waste management systems maintained in each county. Potential losses were estimated using the total property value of the swine, poultry, and turkey facilities in a county. The potential property tax revenue losses statewide could have totaled approximately $9.9 million per fiscal year.

The act is effective for property tax years beginning on or after July 1, 2002. (MH)

Revenue Law Enforcement Enhancements

S.L. 2002-106 (SB 1218) improves the enforcement of tax laws by allowing for enhanced punishment when an income tax return preparer aids or assists in the filing of false or fraudulent documents with the Department of Revenue by creating an offense for fleecing taxpayers, and by allowing the Department of Revenue to share information concerning the commission of any offense with appropriate state or federal law enforcement agencies.

The sections allowing for enhanced punishment and creating a new offense became effective December 1, 2002, and applies to actions committed on or after that date. The section allowing disclosure between the Department of Revenue and appropriate state or federal law enforcement agencies became effective September 6, 2002. (MW)

Contracts to Reimburse Fuel Tax/Fuel Tax Change

S.L. 2002-108 (SB 1407) gives local distributors a contract right to delay reimbursing federal fuel tax to the supplier until one day before the supplier is required to remit the tax to the federal government. The act also converts the local government fuel tax refund to an exemption and makes several other changes to the motor fuel tax laws. The only provision with a fiscal impact is the one converting the local government fuel tax refund to an exemption. The exemption will be slightly revenue positive for local governments because of the interest earned on funds that once went to fuel tax payments before being refunded. Based on refund amounts for past years, Fiscal Research estimates the annual float gain for locals would have been $227,030 for fiscal year 2000-01 and $252,860 for fiscal year 1999-00.

The contract right provision became effective September 1, 2002. The motor fuel tax provisions become effective January 1, 2003. (MH)

Secure Local Revenues

S.L. 2002-120 (HB 1490). See **Local Government.**

Local Sales Tax Acceleration

S.L. 2002-123 (SB 1292) accelerates the effective date of the local option sales tax from July 1, 2003, to December 1, 2002. There is no General Fund impact. The total estimated potential revenue available to local governments from this additional ½ cent if all 100 counties were to enact the tax in December 2002 is approximately $188.1 million. After deductions for administration by the Department of Revenue, the amount is reduced to $187.8 million. However, since the act is permissive and counties can decide to enact the tax at any time, no exact fiscal estimate is possible.

The act became effective September 26, 2002, but local units cannot levy the sales tax itself until December 1, 2002. (TG)

Current Operations, Capital Improvements, and Finance Act of 2002

S.L. 2002-126, Secs. 30A though 30I (SB 1115, Secs. 30A through 30I) makes the following tax law changes (TG):

Section #	*Description and Effective Dates*	*Fiscal Impact*
30A.1	**Local Government Revenues** Accelerates the repeal of the tax reimbursements from July 1, 2003, to July 1, 2002. Also authorizes local governments to raise or lower property taxes between July 1 and the following January 1 to account for unanticipated revenue increases or decreases.	This will produce a General Fund revenue gain of $333.4 million per year beginning in FY 2002-03.
30B.1	**Delay 2001 Tax Break: Elimination of Marriage Penalty for Standard Deduction** Delays the enactment by one year of the tax break enacted in 2001 eliminating the marriage penalty in the standard deduction, originally effective beginning with the 2002 tax year. Now, the standard deduction for married filing jointly taxpayers will increase from $5,000 to $5,500 in tax year 2003, and then to $6,000 in tax year 2004.	The net gain to the General Fund as the result of delaying the first $500 increase is $31.9 million for FY 2002-03. For the $6,000 standard deduction delayed until 2004, the General Fund will gain $12.6 million that year.
30B.2	**Delay 2001 Tax Break: Increase of Tax Credit for Children** Delays the enactment by one year of the increased tax credit for children enacted in 2001. Beginning with tax year 2003, the tax credit for children is increased from $60 to	The delay will eliminate the $19.8 million General Fund loss originally projected for FY 2002-03 and result in a General Fund revenue gain of an equal amount. There will be a revenue gain of $34.9 million in FY

Section #	Description and Effective Dates	Fiscal Impact
	$75 per child and then to $100 in tax year 2004.	2003-04. The increase to $100 in tax year 2004 will result in a loss of $54.8 million in FY 2004-05.
30C.1	**Update IRC Reference** Updates the Internal Revenue Code reference from January 1, 2001 to May 1, 2002, with exceptions for accelerated depreciation and the estate tax credit. This update makes North Carolina conform to federal law with regard to recent pension tax changes, education initiatives, the increased estate tax exemption limitations, and the extension of the carryback period for net operating losses for tax years ending 2001 and 2002.	The following General Fund revenue loss is expected: FY2002-03 $16.9 million FY2003-04 $25.5 million FY2004-05 $49.7 million FY2005-06 $76.9 million FY2006-07 $77.3 million
30C.2	**Accelerated Depreciation Provisions** Decouples North Carolina law from federal law by requiring taxpayers to add back to federal taxable income a percentage of the additional 30% accelerated depreciation allowed under federal law, effective for taxable years beginning on or after January 1, 2002. Taxpayers will continue to be able to deduct the same amount of an assets' basis under both federal and State law, but the timing of the deduction will differ.	The impact of the changes is essentially revenue neutral over the long-term since the conformity deals with an acceleration of depreciation, not the total amount of the deduction over the life of an asset. Thus, there will be substantial revenue losses starting in FY 2006-07. The General Fund impact is estimated as follows: FY2002-03 $38.2 mill FY2003-04 $8.6 mill FY2004-05 -$60.8 mill
30C.3	**Estate Death Tax Credit Provision** Decouples North Carolina law from the phase-out of the state death tax credit under federal law, effective for estates of decedents dying on or after January 1, 2002. This provision sunsets for decedents dying on or after January 1, 2004.	Although decoupling from the phase-out of the State death tax credit avoids the loss of revenue from full conformity to the federal phase-out of the credit for State death taxes, there is an overall net loss because the act conforms North Carolina estate tax law to the increased federal estate tax exemptions: FY2002-03 $5.5 mill FY2003-04 $7.3 mill FY2004-05 $3.8 mill FY2005-06 $5.9 mill
30C.5	**Federal Gift Tax Annual Exclusion** Conforms the North Carolina gift tax exclusion to the federal inflation-adjusted gift tax exclusion used by the federal government, effective January 1, 2002.	The General Fund revenue loss is estimated as follows: FY2002-03 $0.2 mill FY2003-04 $0.2 mill FY2004-05 $0.2 mill FY2005-06 $0.4 mill FY2006-07 $0.4 mill

Section #	*Description and Effective Dates*	*Fiscal Impact*
30D.	**Unauthorized Substance Tax Expenses** Provides that local governments will bear 70% of the State's expenses in collecting the unauthorized substance tax, effective June 30, 2002. The expenses are drawn from local sales tax distributions. This section does not change the amounts that are distributed to local law enforcement agencies.	The General Fund will be reimbursed for 70% of the Unauthorized Substance Tax Division's operating expenses resulting in an annual gain of $900,000.
30E.	**Insurance Regulatory Charge** Sets the insurance regulatory charge, which is assessed on the premiums tax paid by insurers, at 6.5% for the 2002 calendar year. The revenue generated by this charge is used to reimburse the General Fund for appropriations to the Department of Insurance to pay expenses incurred in regulating the industry.	The charge is expected to generate $25 million for FY 2002-03.
30F.	**Regulatory Fee for Utilities Commission** Sets the public utility regulatory fee at 0.1% for FY 2002-03. It also sets the electric membership corporation regulatory fee at $200,000 for FY2002-03. These are the same as the 2001 rates.	This fee, which funds the operations of the Utilities Commission and the Public Staff, is expected to produce $11,700,238 for FY 2002-03.
30G.1	**Close Corporate Tax Loophole: Broaden Definition of Business Income** Broadens the definition of "business income" to include all income that states can apportion for corporate income tax purposes under the U.S. Constitution, effective with taxable years beginning on or after January 1, 2002.	The General Fund revenue gain is estimated as follows: FY2002-03 $70.0 mill FY2003-04 $50.0 mill FY2004-05 $53.7 mill FY2005-06 $56.7 mill FY2006-07 $59.5 mill
30G.2	**Close Corporate Tax Loophole: Equalize Franchise Tax on Corporate-Affiliated LLCs** Tightens 2001 legislation intended to close a loophole that allows corporations to escape franchise tax by transferring assets to a controlled LLC, effective beginning with payments due in March 2003.	The General Fund revenue gain is estimated as follows: FY2002-03 $20.0 mill FY2003-04 $21.2 mill FY2004-05 $22.5 mill FY2005-06 $23.8 mill FY2006-07 $25.2 mill
30H.	**Housing Tax Credit** Enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999 by backdating the effective date for eligibility from 2001 to 2000.	Assuming the project investors use 100% of the available tax credit, the General Fund revenue loss is $2.15 million for fiscal years 2002-03 to 2006-07.
30I.	**No Estimated Income Tax Penalty for 2002 Tax Year** Provides that no estimated income tax penalty applies for the 2002 tax year to the extent the underpayment was created or increased by a provision of the act.	

Subsidiary Dividend Changes

S.L. 2002-136 (HB 1670) provides clarity to the expense attribution law as it applies to deductible dividends and provides limits on the additional tax liability. These limits were calculated so that the act should yield revenue at least equal to what had been included in budget availability estimates based on the 2001 legislation that conformed State law to the federal rules for the deduction of dividends received. Under the act, the State may expect to receive approximately $57 million a year for 2001, 2002, and 2003 from the taxation of subsidiary dividends. Of this amount, the State expects to receive approximately $80 million in availability for the 2002-03 budget. The act states the intent of the General Assembly that it will be effective during 2001 and 2002 but will be studied and may be revised effective beginning with the 2003 tax year.

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

Interstate Air Couriers – Bill Lee Act Changes

S.L. 2002-146 (HB 1665) rewrites the wage standard under the William S. Lee Quality Jobs and Business Expansion Act to allow part-time jobs for which the taxpayer provides health insurance to be counted as having wages at least equal to the standard times the applicable average weekly wage for the county in which the jobs will be located. The act also makes the following changes to the Act as it applies to air courier hubs:

- Rewrites the definition of interstate air courier hub to conform to industry practice.
- Extends the regular Bill Lee Act sunset of January 1, 2006, to January 1, 2010, for an interstate air courier that enters into a major real estate lease on or before January 1, 2006, with an airport authority.
- Allows an interstate air courier that has, or is constructing, a hub in North Carolina to qualify for enhanced incentives if the courier makes an investment of $150 million or more within a seven-year period.
- Extends the sunset on the Piedmont Triad Airport Authority's exemption from the bidding laws from January 1, 2008, to January 1, 2010.

The initial estimates of the impact of the Fed Ex incentives in 1998 have not changed with the delay in the project. The 1998 estimates indicated that the lower sales tax rate on handling and storage equipment would amount to $.4 million for the first two years that the project is getting started and $.1 million per year thereafter. The impact of the sales tax exemption for lubricants and repair parts comes into play after the facility is up and running. The estimate for this incentive is $.2 million a year. The uncertainty surrounding the timing of the project means that it is impossible to predict which year the impacts begin. Under current scheduling, the first year of the handling and storage equipment incentive could be 2005-06. The costs of the sales tax incentives will not occur until at least 2005-06.

In addition, the extension of the Bill Lee Act's sunset from 2006 to 2010 for interstate air couriers will allow Fed Ex and other eligible taxpayers to take tax credits under the Act during the 2006-09 period. Data from the State's 1998 offer of financial benefits to Fed Ex indicated that Bill Lee Act credits of $2 million would be taken over a four-year period.

The air courier hub definition rewrite became effective October 1, 2002, and applies to sales made on or after that date. The bidding law exemption effective date change became effective when the act became law, October 7, 2002. The remaining provisions in the act become effective for tax years beginning on or after January 1, 2002. (CA)

Amend Property Tax Laws

S.L. 2002-156 (HB 1523) is a recommendation of the Revenue Laws Study Committee based on proposals by the North Carolina Association of Assessing Officers and the Department of Revenue. It makes the following changes to the property tax laws:

- Increases the minimum penalty for a worthless check from $1 to $25 and provides that the tax collector may waive or reduce the penalty. This change became affective when the act became law, October 9, 2002.
- Provides a uniform procedure for appeals regarding taxation of personal property and authorizes the board of equalization and review to meet year round to hear these appeals. These changes are effective beginning with the 2003 property tax year.
- Delays from 2002 until 2003 the effective date of a 2001 law that defined certain single-section manufactured homes as real property for tax purposes.
- Adds an additional collection assistance fee of $15 to debts owed to local governments and collected by the Department of Revenue through tax refund setoff, effective January 1, 2003. The fee will be used to pay local governments' costs of submitting debts for collection by setoff.

Two provisions of the act are likely to have a fiscal impact. Increasing the minimum charge for a returned check will likely increase local fee revenues. However, granting the assessor the authority to waive the fee will offset some of the increase. The exact amount of this revenue change is unknown. The second potential impact relates to the debt setoff program. The proposal will reduce the cost of debt collection for local governments and will likely increase program usage. However, no firm estimate is available on the total financial impact for local governments. (MH)

NC Economic Stimulus and Job Creation Act

S.L. 2002-172 (HB 1734) has six parts:

- Part 1 of the act amends the Bill Lee Act by scaling back the credit for machinery and equipment in tiers three, four, and five, by eliminating the wage standard in tiers one and two and in development zones, and by eliminating the wage standard for the credit for worker training. These changes are effective for taxable years beginning on or after January 1, 2003, and apply to business activities that occur on or after that date, but does not apply to business activities that occur on or after January 1, 2003, that are subject to a letter of commitment signed before January 1, 2003. The changes will generate approximately $3.45 million for fiscal year 2003-04, $7 million for fiscal year 2004-05, and $10.56 million for fiscal year 2005-06.
- Part 2 of the act creates the Jobs Development Investment Grant Program, a discretionary program that awards grants to businesses based on a percentage of employee withholdings over a number of years. The Jobs Development Investment Grant Program represents a significant change from the structure of the Bill Lee Act incentives. It is impossible to determine the exact dollar cost of the program. However, the program is limited to 15 projects per year, $10 million in grants per year, and sunsets on January 1, 2005. Thus the maximum grant amount that may be awarded during the 13 years the program is in effect is $240 million. This part became effective when it became law, October 31, 2002.
- Part 3 of the act requires production companies to spend at least $1 million in North Carolina to be eligible for a grant from the Film Industry Development Account. No fiscal impact is expected from the changes to the film industry incentives. This part became effective October 31, 2002.

- Part 4 of the act makes a technical change to the North Carolina Railroad's condemnation authority. It does not appear to have any substantive affect on the power of a railroad to condemn property. This part became effective October 31, 2002.
- Part 5 of the act eases the public hearing requirements for Industrial Development Bonds to facilitate bonds for smaller manufacturers. Part 5 of the act becomes effective January 1, 2003.
- Part 6 of the act provides authorization to the initiate planning and development of a new biopharmaceutical training center and a cancer rehabilitation treatment center, effective October 31, 2002. (CA)

Amend Use Value Statutes and Other Tax Laws

S.L. 2002-184 (SB 1161) does three things:

- It amends the present-use value law to provide an updated method for calculating the value of farmland in its present use, to clarify the sound management requirement for qualifying for use value taxation, to allow land subject to a conservation easement to continue to qualify for use value taxation, and to make numerous clarifying and procedural changes. The changes are effective beginning with the 2003 property tax year. The use value changes will affect local governments, but data are not available to calculate the amount of the impact. The remaining items will all result in a slight but undefined loss or no loss to the General Fund.
- It establishes a property tax subcommittee of the Revenue Laws Study Committee, effective October 31, 2002. The subcommittee will have six members and will study use value taxation and existing and potential tax incentives for farm use, conservation, and environmental protection of land.
- It makes changes to the administration of various sales tax laws, as recommended by the Revenue Laws Study Committee. The provision related to the sales taxes on plant inhibitor equipment is likely to create a small but undefined revenue gain. The change in sales tax payment dates will result in a small revenue loss due to the loss of the float, but no exact estimate is possible. The change in the sale tax payment dates became effective October 1, 2002. The remaining sales tax changes became effective October 31, 2002. (MH)

Studies

Legislative Research Commission

Studies Act of 2002

S.L. 2002-180, Part IX (SB 98, Part IX), authorizes the Revenue Laws Study Committee to study the following tax issues:

- Sales tax on construction materials.
- Mobile home property tax collection.

This section became effective October 31, 2002. (CA)

Referrals to Existing Commissions/Committees

Amend Pollution Abatement Tax Exclusion

S.L. 2002-104, Sec. 2 (SB 1253, Sec. 2) directs the Revenue Laws Study Committee to study issues related to the application of the property tax exemption for certain animal waste management systems.

This section became effective September 6, 2002. (CA)

Subsidiary Dividend Changes

S.L. 2002-136 (HB 1670) directs the Revenue Laws Study Committee to study the treatment of expenses related to dividends received and other income not taxed and the taxation of affiliated corporations, of holding companies, and of financial institutions under current law. The Committee shall report to the 2003 General Assembly its recommendations for modifying the provisions of S.L. 2002-136 and other provisions of the taxes on corporations and businesses in order to provide for a more equitable and stable source of revenue. It is the intent of the General Assembly to address the issues raised by S.L. 2002-136 during the 2003 Regular Session and enact changes effective for taxable years beginning on or after January 1, 2003.

The act became effective October 3, 2002. (CA)

NC Economic Stimulus and Job Creation Act

S.L. 2002-172 (HB 1734) directs the Revenue Laws Study Committee to study the use, effectiveness, and cost versus benefits of the Job Development Investment Grant Program, the Bill Lee Act credits, and the Industrial Recruitment Competitive Fund.

The act became effective October 31, 2002. (CA)

Amend Use Value Statutes and other Tax Laws

S.L. 2002-184 (SB 1161) establishes a Property Tax Subcommittee of the Revenue Laws Study Committee. The Subcommittee is authorized to study, examine, and, if necessary, recommend changes to the property tax system.

The act became effective October 31, 2002. (CA)

Chapter 19
Technology

Brenda Carter (BC) and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Electronic Procurement

S.L. 2002-126, Secs. 27.1(a)–27.1(c) (SB 1115, Secs. 27.1(a)–27.1(c)) amends G.S. 143-48.3 to require the Department of Administration (Department) to develop and maintain electronic or digital standards for procurement, in consultation with the Office of the State Controller, the Office of Information Technology Services (ITS), the State Auditor, the State Treasurer, the UNC General Administration, the Community Colleges System, and the Department of Public Instruction. The Department is directed to utilize ITS as an Application Service Provider for an electronic procurement system, and ITS is directed to operate the electronic procurement system in accordance with requirements and operating standards developed by the Department. With regard to the electronic procurement system, ITS is subject to the financial reporting and accounting procedures of the Office of the State Controller. The Department is directed to comply with the State government-wide technical architecture for information technology, as required by the Information Resources Management Commission.

(See also **Studies**.)

These sections became effective July 1, 2002. (BC)

Information Technology Security Practices/State Auditor

S.L. 2002-126, Secs. 27.2(a)–27.2(c) (SB 1115, Secs. 27.2(a)–27.2(c)) requires that a State agency notify the State Chief Information Officer and obtain approval of the request before entering into any contract with another party for an assessment of network vulnerability, including network penetration or any similar procedure. The State Chief Information Officer will forward any such request to the State Auditor for a determination of whether the Auditor's office can perform the assessment and testing. If the State Auditor determines that his office cannot perform the assessment and testing, then with the approval of the State Chief Information Officer and State Auditor, the State agency may enter into a contract with another party for the assessment and testing. If the State agency enters into a contract with another party for assessment and testing, the State agency is required to issue public reports on the general results of the reviews undertaken, but the detailed reports of the security issues identified will not be subject to disclosure under the public records law. When the State Auditor enters into a contract with a State Agency for an assessment of network vulnerability, any contract for the assessment and testing will be on a cost-reimbursement basis.

These sections became effective November 1, 2002. (BC)

Office of Administrative Hearings/Automation Review

S.L. 2002-126, Sec. 27.3 (SB 1115, Sec. 27.3) requires the Office of Administrative Hearings, in consultation with the Office of Information Technology Services, to report on the cost and feasibility of developing or acquiring an enterprise-wide automated system for the rule-making process. The Office of Administrative Hearings is directed to contact the rule-making agencies in other states to determine best practices in automating this process, and the Office of

Information Technology Services is directed to assist in the survey process on technical issues. The report is to include an estimate, based on an agency survey, of the costs incurred by State agencies in the current rule-making process and should present options for automating the State's rule-making process, including costs. The report is due by February 15, 2003, and will be submitted to the Chairs of the Joint Select Committee on Information Technology, to the Chairs of the Joint Legislative Administrative Procedure Oversight Committee, and to the Fiscal Research Division.

This section became effective July 1, 2002. (BC)

HIPAA Implementation

S.L. 2002-126, Secs. 27.4(a)–27.4(c) (SB 1115, Secs. 27.4(a)–27.4(c)) direct the Governor or the Governor's designee to coordinate the State's implementation of the federal Health Insurance Portability and Accountability Act (HIPAA), Title II Subtitle F (Administrative Simplification). The Information Resource Management Commission (IRMC) is directed to cooperate with the Governor to ensure that IRMC policies and activities and State HIPAA implementation are complementary and ensure effective and efficient monitoring of HIPAA Administrative Simplification requirements. The University of North Carolina System and the Teachers' and State Employees' Comprehensive Major Medical Plan are authorized to develop and implement HIPAA Administrative Simplification compliance and are directed to report bimonthly to the Governor on the status of implementation. Funds appropriated to the Reserve for Health Insurance Portability and Accountability Compliance that are unexpended and unencumbered at the end of the fiscal year will not revert to the General Fund but will remain in the Reserve for use in accordance with the purposes of the Reserve.

These sections became effective July 1, 2002. (BC)

Studies

Legislative Research Commission

State Human Resource And Retirement Systems Information Technology LRC Study

S.L. 2002-126, Secs. 27.5(a)–27.5(b) (SB 1115, Secs. 27.5(a)–27.5(b)) direct the Legislative Research Commission to examine how information technology is used in the administration of the State's human resource systems, including personnel, benefits, leave reporting, and payroll. The study is to consider how information technology solutions might streamline human resource management processes and eliminate unnecessary or duplicative paperwork. The study is also to review how an enterprise approach might improve the effectiveness and efficiency of the State's human resource management system and the State's administration of retirement and employees benefits, and review any other matter that relates to the State's use of information technology for personnel, retirement, and benefits administration. The Legislative Research Commission is to report its findings to the 2003 Regular Session of the General Assembly, along with any legislative recommendations.

These sections became effective July 1, 2002. (BC)

Internet Spam

S.L. 2002-126, Sec. 2.1(3) (SB 98, Sec. 2.1(3)) authorizes the Legislative Research Commission to study the issue of unsolicited bulk commercial electronic mail (spam), including

the commercial dissemination of pornography to or from this State via the Internet and the problem of unsolicited bulk electronic mail of a pornographic or obscene nature. If the study is undertaken, the final report will be due upon the convening of the 2003 Session.

This section became effective October 31, 2002. (BC)

Referrals to Existing Commissions/Committees

Information Technology Procurement Study

S.L. 2002-126, Sec. 27.1(d) (SB 1115, Sec. 27.1(d)) directs the Joint Select Committee on Information Technology to study and evaluate the procurement of information technology in the State, including the governance of information technology procurement and associated costs, the use of appropriate procurement methodology, how to maximize the efficiency of the State's procurement process as it relates to information technology procurement, and the enterprise management of the State's information technology assets. The Office of State Budget and Management, the Department of Administration, and the Office of Information Technology Services are directed to provide information and data analysis for the purposes of the study. The Committee is directed to report its findings and recommendations to the Chairs of the House of Representatives Appropriations Subcommittee on Information Technology and Senate Appropriations Committee on Information Technology by February 15, 2003.

This section became effective July 1, 2002. (BC)

Chapter 20
Transportation

Brenda Carter (BC), Giles S. Perry (GSP), Wendy Graf Ray (WGR), and others
(See reference by initials on page 158 of this publication.)

Enacted Legislation

Department of Transportation

US Highway 601 Contracts

S.L. 2002-60 (SB 1135) authorizes the Department of Transportation to use the design-build method of contracting for the multi-laning of US Highway 601 from the South Carolina state line to US Highway 74 in Union County. Design-build means that a single entity is responsible for both design and construction of the project, and the general expectation is that communications between the design and construction personnel are facilitated, resulting in savings of both time and money.

The act became effective August 1, 2002. (BC)

Secondary Road Paving/Purple Heart Memorial Highway

S.L. 2002-86 (HB 1492) changes G.S. 136-44.7(c) to require the Department of Transportation (DOT) to condemn property needed for a planned secondary road project, if 75% or more of the property owners adjacent to the project and the owners of the *majority* of the road frontage adjacent to the project have provided the necessary right-of-way and funds to cover the condemnation costs (up to $2500).

Under prior State law, G.S. 136-44.7(c), enacted in 2001 by S.L. 2001-501 (SB 1038), if DOT was planning to pave a secondary road, and needed right-of-way for the project, it was required to negotiate for acquisition of the right-of-way for up to six months, and then condemn the necessary right-of-way, if 75% or more of the property owners adjacent to the project, and the owners of 75% of the road frontage adjacent to the project had provided the necessary right-of-way and funds to cover the condemnation costs (up to $2500).

According to DOT, there is no recorded DOT-owned easement for many State-maintained unpaved secondary roads. Prior to 2001, DOT did not condemn land for secondary road paving and maintenance projects. Although DOT has been authorized to condemn property for secondary roads for many years, DOT's policy was to request donation of an easement before paving a State-maintained road. On many secondary road projects, DOT reported that most adjacent landowners agreed to donate the needed right-of-way. With some proposed paving projects, however, there are landowners who refuse to donate the needed right-of-way. DOT's policy prior to 2001 was: (1) to ask adjacent landowners to provide up to $2500 to cover condemnation costs for that parcel; (2) not pave the road; or (3) only pave the portion of the road for which DOT obtained a right-of-way. Following enactment of new G.S. 136-44.7(c) in 2001, DOT was required to condemn land for secondary road projects in the described circumstances. The act changes the standards enacted in 2001 to expand the situations where DOT is required to condemn land for a secondary road project.

In addition, the act designates Interstate 95 in the State as the Purple Heart Memorial Highway, in tribute to North Carolinians who have been wounded or killed in military actions, and directs the Department to erect appropriate signs paid for by the Military Order of the Purple Heart.

The act became effective August 22, 2002. (GSP)

Biltmore Avenue Airspace Encroachment

S.L. 2002-126, Sec. 26.3 (SB 1115, Sec. 26.3) authorizes the Department of Transportation to permit private use of an encroachment upon the airspace above Biltmore Avenue in Asheville for the purpose of constructing a pedestrian bridge to connect the campuses of Mission St. Joseph's Health System.

This section became effective July 1, 2002. (GSP)

Cash Management Program Modification

S.L. 2002-126, Sec. 26.4 (SB 1115, Sec. 26.4) amends the Department of Transportation (DOT) cash management provision enacted in 2001 as S.L. 2001-424, Sec. 27.23. That section authorized DOT to use specified amounts of its cash balances for primary route pavement preservation, preliminary engineering, traffic control systems, and public transportation. This section makes the prior 2001 cash management section mandatory, deletes a requirement that DOT certify that use of its cash balances for the listed purposes will not adversely affect the delivery schedule of Highway Trust Fund projects, and encourages DOT to use all existing resources, including bonded indebtedness, to mitigate any delays in construction of Transportation Improvement Program Projects.

This section became effective July 1, 2002. (GSP)

Division of Motor Vehicles Printing Efficiency

S.L. 2002-126, Sec. 26.5 (SB 1115, Sec. 26.5) directs the Department of Transportation (DOT) to implement a more cost-effective method of providing printing services.

S.L. 2002-159, Sec. 69.3 (SB 1217, Sec. 69.3) adjusts the amount of funds available to DOT for printing services in response to DOT's renegotiation of its printing services contract.

S.L. 2002-126, Sec. 26.5 (SB 1115, Sec. 26.5) became effective July 1, 2002. S.L. 2002-159, Sec. 69.3 (SB 1217, Sec. 69.3) became effective October 11, 2002. (GSP)

Small Urban Contingency Funds

S.L. 2002-126, Sec. 26.9 (SB 1115, Sec. 26.9) increases the amount of funds available to the Department of Transportation (DOT) for small urban construction projects from $14 million to $21 million in 2002-2003 and authorizes their use within a two-mile (was one-mile) radius of the affected municipality; increases the amount of funds available to DOT for rural and small urban highway improvements, industrial access roads, and spot safety projects from $10 million to $15 million in 2002-2003; and amends the DOT cash management provision enacted in 2001 as S.L. 2001-424, Sec. 27.23 to authorize the use of an additional $7 million of DOT's cash balances for small urban construction projects, in addition to the increase specified above.

This section became effective July 1, 2002. (GSP)

Urban Loop Termini

S.L. 2002-126, Sec. 26.10 (SB 1115, Sec. 26.10) amends the description of the Durham and Wilmington urban loops designated for construction in the Highway Trust Fund Act, and authorizes the Board of Transportation to change the termini of any loop if the Department of Transportation has constructed a new interstate or freeway since 1989 and changed the official route designation from the termini originally described in the Highway Trust Fund Act.

This section became effective July 1, 2002. (GSP)

Department of Transportation Use of Receipts for Facilities Improvement

S.L. 2002-126, Sec. 26.13 (SB 1115, Sec. 26.13) authorizes the Secretary of Transportation to approve the use of receipts from the sale of Department of Transportation real property, other than right-of-way property, to make needed improvements to its facilities. Prior to the sale of the real property and the use of the funds for improvements to facilities, the Secretary is required to report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations on the planned implementation of this section.

This section became effective July 1, 2002. (GSP)

Payback Schedule for Transfer From Highway Trust Fund to General Fund

S.L. 2002-126, Sec. 26.14 (SB 1115, Sec. 26.14) specifies that funds transferred from the Highway Trust Fund to the General Fund in addition to the transfer authorized by G.S. 105-187.9(b) shall be repaid to the Highway Trust Fund in five years beginning in the 2004-2005 fiscal year, including interest.

This section became effective July 1, 2002. (GSP)

Nonbetterment Relocation Cost for County Owned Gas Line

S.L. 2002-126, Sec. 26.18 (SB 1115, Sec. 26.18) requires the Department of Transportation to pay the cost to move, but not upgrade, county-owned natural gas lines located within existing State highway right-of-way that the Department needs to relocate due to a State highway improvement project.

This section became effective July 1, 2002. (GSP)

Department of Transportation Contracts

S.L. 2002-151 (HB 1518) makes three changes to the laws governing Department of Transportation (DOT) contracts.

The act increases the limit at or below which DOT may solicit informal bids on projects from $800,000 to $1,200,000. The act also increases the number of design-build projects that DOT may award each year as follows: 10 design-build projects in FY 2002-2003, and 25 in FY 2003-2004 through FY 2008-2009.

The act also specifies that DOT may award design-build contracts of any amount; encourages DOT to promote maximum participation in design-build contracts and structure contracts so that North Carolina firms have a fair and equal opportunity to compete; requires minority participation goals for design-build contracts; and requires DOT to report to the Joint Legislative Transportation Oversight Committee on any proposed design-build projects projected to cost more than $100 million.

The act also changes State law to require DOT to include a provision in its construction contracts that requires iron used in DOT projects be produced in the U.S., and repeals a requirement that DOT include a provision in its construction contracts that requires cement used in DOT projects be made in the U.S. Similar language is already included in federal law, and is applicable to federal-aid highway construction projects.

The act became effective October 9, 2002. (GSP)

Use of Funds for Highway Projects that Further Economic Development

S.L. 2002-159, Sec. 41.5 (SB 1217, Sec. 41.5) amends the Department of Transportation (DOT) cash management provision enacted in 2001 as S.L. 2001-424, Sec. 27.23. That provision authorized DOT to use 10% of the funds designated for primary route preservation to be used for highway improvement projects that further economic growth and development in small urban and rural areas, that are in the Transportation Improvement Program, and are approved by the Board of Transportation. This section expands the use of those funds to include highway improvement projects that further economic development in the State and that are individually approved by the Board of Transportation.

This section became effective October 11, 2002. (GSP)

DOT Planning/Dale Earnhardt Highway

S.L. 2002-170 (HB 1516) amends the law governing planning by the Department of Transportation (DOT). Prior law allowed Rural Transportation Planning Organizations (RTPOs) to include representatives from contiguous areas, but the act amends the law to allow noncontiguous counties to form RTPOs if they are adjacent to the same Metropolitan Planning Organization. The act also expands the eligible uses of grants from DOT to RTPOs, allowing the use of grants to carry out any of the statutory duties of RTPOs, rather than allowing their use for professional planning staff only.

The act designates State Highway 136 in Iredell and Cabarrus counties as State Highway 3, to be known as the "Dale Earnhardt Highway."

The act also amends the definition of moped so that the maximum allowable speed of a vehicle defined as a moped is increased from 20 mph to 30 mph. The Joint Legislative Transportation Oversight Committee is also directed to study the creation of a moped identification tag program. The Committee must report its findings to the General Assembly by March 1, 2003.

The act became effective October 23, 2002. (WGR)

Drivers Licenses

Level 2 Graduated Drivers License Restriction

S.L. 2002-73 (HB 1546) amends the graduated drivers license law to provide occupancy restrictions for vehicles operated by drivers with Level 2 limited provisional licenses. Currently, there are three levels of driving privileges for persons less than 18 years of age. A Level 2 provisional license holder may only drive under the following conditions:

- The license holder must be in possession of the license.
- The license holder may drive without supervision from 5 a.m. to 9 p.m., or at any time if the purpose is to drive to or from work, or to or from a volunteer fire department, rescue squad, or emergency medical service activity.
- The license holder may drive with supervision at any time.
- Every person occupying the vehicle must have a safety belt fastened.

The act adds additional passenger restrictions for the Level 2 limited provisional license holder. There is no restriction on the number of passengers that may occupy the vehicle if the driver is supervised, but if the driver is unsupervised, there may only be one non-family member passenger under the age of 21 in the vehicle. There is no limit on passengers over the age of 21 and passengers who are family members or members of the same household as the driver.

However, if any family or household member passenger is under the age of 21, then no other passenger under the age of 21, who is not a family or household member, may be in the vehicle.

The act also specifies that a violation of the passenger restrictions does not constitute negligence per se or contributory negligence by the driver or passenger, evidence of the violation is not admissible in a criminal or civil trial for an action other than one based on a violation of the restriction, and no drivers license or insurance points will be assessed for a violation of the restriction.

The act became effective December 1, 2002, and applies to limited provisional licenses issued on or after that date. (WGR)

Graduated Drivers License Weekend or Holiday Expiration

S.L. 2002-159, Sec. 30 (SB 1217, Sec. 30) amends the graduated drivers license law to extend the validity of a limited provisional learner's permit or a limited provisional license that expires on a weekend or holiday for five additional business days following the date of expiration.

This section became effective October 11, 2002. (GSP)

NCDL/Selective Service Registration

S.L. 2002-162, Secs. 1-2 (HB 1245, Secs. 1-2), as amended by S.L. 2002-159, Sec. 67 (SB 1217, Sec. 67), provide that any male United States citizen or immigrant who is at least 18 years of age but less than 26 years of age must be registered with the Selective Service System in compliance with the Selective Service Act when applying for the issuance, renewal, or duplication of a drivers license, a commercial drivers license, or an identification card. The act requires the Division of Motor Vehicles (DMV) to electronically forward the personal information necessary to register with the Selective Service System when a person required to be registered applies for a license or identification card. Application for a license or identification card constitutes an affirmation that the applicant has already complied with the registration requirements, or that he authorizes DMV to forward the necessary information to the Selective Service for registration. DMV must notify the applicant on the application that the submission of an application for the issuance, renewal, or duplication of a drivers license or identification card serves as his consent to be registered. DMV is required to implement the requirements of this section at the earliest practical date, but no later than April 1, 2003.

The act became effective October 17, 2002. (TG)

License Plates

Special License Plates

S.L. 2002-134 (HB 1745) makes several changes to the laws regarding the issuance of special license plates. The act removes the requirement that 300 applications be received before the issuance of World War II and Korean Conflict Veterans plates, and provides for the logo on the Rocky Mountain Elk Foundation special license plate to be one approved by the Foundation. The act also authorizes the Division of Motor Vehicles to issue special license plates for Aviation Maintenance Technicians, North Carolina Agribusiness, and for the State's official vegetable, the sweet potato. At least 300 applications must be received before issuance of the new plates. An additional fee of $10 will be charged for the Aviation Maintenance Technician and the Sweet Potato plates. An additional fee of $25 will be charged for the Agribusiness plate, with $15 of the fee going to the Collegiate and Cultural Attraction Plate Account to be distributed quarterly to the Agribusiness Council and used to promote awareness of the importance of agribusiness in the State.

The act became effective October 3, 2002. (BC)

Rocky Mountain Elk License Plate Change

S.L. 2002-159, Sec. 31.1 (SB 1217, Sec. 31.1) deletes the requirement that the Rocky Mountain Elk Foundation special license plate include the phrase "First in Flight."

This section became effective October 11, 2002. (GSP)

Motor Vehicles

Whispering Pines Regulate Golf Carts

S.L. 2002-82 (HB 1686) authorizes the Village of Whispering Pines and Moore County, for the Seven Lakes Community only, to regulate by ordinance the operation of golf carts. Similar authority was previously enacted for the municipalities of Lake Waccamaw and Cary.

The act became effective August 19, 2002. (GSP)

Two-Wheeled Mobility Devices

S.L. 2002-98 (SB 1144) defines an electric personal assistive mobility device as a self-balancing nontandem two-wheeled device designed to transport one person at a maximum speed of 15 miles per hour or less. The devices may be operated on public highways with posted speeds of 25 miles per hour or less, and on sidewalks or bicycle paths. The devices are specifically excluded from the statutory definition of a vehicle and are exempt from motor vehicle registration laws. Municipalities are authorized to by ordinance regulate the time, place, and manner of operation of the devices.

The act became effective August 29, 2002. (BC)

Transportation of Wood Chips and Other Wood Products

S.L. 2002-126, Sec. 26.16(a) (SB 1115, Sec. 26.16(a)) adds an additional exception to the highway weight limits and penalties statute to authorize the transportation of wood residuals, including wood chips, sawdust, mulch, and tree bark, excluding on interstate highways, posted light traffic roads, or posted bridges, of a maximum gross weight of 4,000 pounds in excess of the regular limit, if the vehicle does not exceed a single-axle weight of more than 22,000 pounds and a tandem axle weight of more than 42,000 pounds.

This section became effective July 1, 2002. (GSP)

Brunswick County Motor Vehicle Laws

S.L. 2002-128 (HB 1502) provides that the motor vehicle laws of the State apply to the operation of vehicles on the streets in the Sanders Forest and Bent Tree communities in Brunswick County. The act provides that the current speed limits on the streets in these communities remain in effect until approved by the Brunswick County Commissioners.

Under general State law, the motor vehicle laws of the State apply to the operation of vehicles on public highways and in public vehicular areas. The motor vehicle laws do not apply to private streets that are not generally open to the public.

The General Assembly has previously enacted local legislation making the motor vehicle laws of the State applicable on private streets in Colington Harbour in Dare County, Carolina Trace in Lee County, Seven Lakes in Moore County, and Lake Royale in Franklin and Nash Counties.

The act became effective December 1, 2002. (GSP)

Off-Road Vehicle/Agriculture Quarantine Program Permit

S.L. 2002-150 (SB 589) exempts off-road vehicles used in agricultural quarantine programs from registration and certificate of title requirements. Under current law, an owner of a vehicle intended to be operated upon the highways of the State must apply to the Division of Motor Vehicles for a certificate of title, a registration plate, and a registration card. The act would exempt from that requirement any vehicle meeting the following requirements:

- It is designed for use in work off the highway.
- It is used for agricultural quarantine programs under the Department of Agriculture and Consumer Services.
- It is operated on the highway for the purpose of going to and from nonhighway projects.
- It is identified in a manner approved by the Division of Motor Vehicles.
- It is operated by a person with an identification card issued by the Department of Agricultural and Consumer Services.

The act became effective October 4, 2002. (WGR)

Public Transportation/Railroads

Rail Transportation Liability

S.L. 2002-78 (SB 759) sets limitations on the liability of railroads for claims made against them for property damage, personal injury, bodily injury, or death arising out of or related to services for passengers by rail. The act authorizes the following entities to enter into contracts with any railroad that allocates financial responsibility for passenger rail services claims against the parties to the contract: a regional public transportation authority established under Article 26 of Chapter 160A (the Triangle Transit Authority); a county that has entered into a transit interlocal agreement with a city with a population of more than 500,000 persons (Mecklenburg County); and a municipality with a population of more than 500,000 persons (Charlotte) or a municipality that has entered into a transit interlocal agreement with that city (the other municipalities in Mecklenburg County). The act requires that when these entities enter into a contract pursuant to the provisions enacted in the act, they maintain liability insurance covering the liability of the parties to the contract for damages arising out of or related to passenger rail services. The policy must have limits of at least $200,000,000 per occurrence. The aggregate allowable awards for all claims arising from a single incident cannot exceed $200,000,000 or the amount of the proceeds available under the insurance policy, whichever is greater.

The act became effective August 15, 2002. (BC)

Trucks

Motor Carrier Safety Amendments

S.L. 2002-152 (HB 1519) gives the Division of Motor Vehicles (DMV) the authority necessary to participate in the Federal Motor Carrier Safety Administration Performance and Registration Information Systems Management (PRISM) program. Currently, the Federal Motor Carrier Safety Administration (FMCSA) regulates interstate motor carriers, but it cannot use vehicle registration refusal or revocation as an enforcement tool because vehicle registration is done at the state level. The PRISM program is designed to link state commercial motor vehicle registration with the safety fitness of motor carriers. Federal grant funds are available to states that participate in the program.

The act requires DMV to refuse to issue a certificate of title for, and to refuse or cancel the registration of, a motor vehicle owned by a motor carrier that has been ordered by DMV or the FMCSA to cease all operations based on a finding that the continued operations of the motor carrier pose an imminent hazard. The act also authorizes DMV to prohibit the intrastate operation of a motor carrier that is determined to be an imminent hazard by the FMCSA. In addition, DMV is authorized by the act to assign safety ratings to intrastate motor carriers and prohibit the operation of intrastate motor carriers that are rated unsatisfactory.

The act became effective December 1, 2002. (WGR)

Commercial Drivers License Training Standards

S.L. 2002-126, Sec. 26.8 (SB 1115, Sec. 26.8) directs the Division of Motor Vehicles to issue rules authorizing certified Commercial Truck Driver Training Schools to offer an 80-hour curriculum appropriate to prepare a student to meet the requirements for a Class B Commercial Drivers license. These rules must be issued by January 1, 2003. This section requires that the new rules must be consistent with existing rules governing Commercial Truck Driver Training Schools, except for the hours of instruction.

This section became effective July 1, 2002. (GSP)

Other

Billboard Just Compensation Sunset Extended

S.L. 2002-11 (HB 1487) extends the current State law that requires local governments to pay just compensation for removal of permitted outdoor advertising located along federal aid-highways, as required by federal law (23 U.S.C. 131(g)).

In 1978, Congress amended the federal Highway Beautification Act to require just compensation be paid for the removal by local governments of billboards lawfully erected under State law adjacent to an Interstate or federal-aid primary highway. This requirement is found in 23 U.S.C. 131(g). To comply with this federal directive, and avoid a potential loss of 10% of the State's federal highway funds, in 1982 the General Assembly enacted G.S. 136-131.1. This section prohibits local governments from removing billboards lawfully erected under State law and adjacent to an Interstate or federal-aid primary highway without the payment of just compensation. G.S. 136-131.1 was originally given a sunset date of June 30, 1984, in case the federal law was subsequently repealed. The federal law has remained in effect, and G.S. 136-131.1 was, as a result, previously extended to June 30, 1988, 1990, 1994, 1998, and 2002.

The act extends the application of the State statute once again, this time by providing that the State law remains in effect until the federal requirement is amended or repealed.

The act became effective June 27, 2002. (GSP)

Open Container Sunset Repeal

S.L. 2002-25 (HB 1488). See **Criminal Law and Procedure.**

Low-Sulfur Gasoline Requirements

S.L. 2002-75 (HB 1308). See **Environment and Natural Resources.**

Contracts to Reimburse Fuel Tax/Fuel Tax Chg.

S.L. 2002-108 (SB 1407). See **Taxation**.

Law Enforcement Escort Fee

S.L. 2002-126, Sec. 26.17 (SB 1115, Sec. 26.17) requires any entity required by the North Carolina Department of Transportation or any federal agency or commission to have a law enforcement escort provided by the State Highway Patrol for the transport of any oversized load or hazardous shipment by road or rail, or who requests an escort, to pay the Department of Crime Control and Public Safety a fee to cover the cost of the escort.

This section became effective July 1, 2002. (GSP)

Toll Road and Bridge Authority Created

S.L. 2002-133 (HB 644) creates a public agency, the North Carolina Turnpike Authority (Authority), to construct, operate, and maintain up to three toll roads or bridges in the State, and to plan for up to three additional toll road or bridge projects.

Governance: The act provides for the Authority to be governed by a nine-member Board of Directors, consisting of two members appointed by General Assembly upon recommendation of the President Pro Tempore of the Senate, two members appointed by the General Assembly upon recommendation of the Speaker of the House, and five members appointed by the Governor, including the Secretary of Transportation. Members of the Board of Directors are to serve four-year staggered terms.

Powers: The Authority is authorized to employ an executive director appointed by the Board of Directors. The Authority is authorized to hire administrative personnel only, may contract for the services of other needed personnel, and may utilize personnel of the Department of Transportation. The Authority is authorized to build and operate three turnpike projects – including one located in whole or in part in a county with a population greater than 650,000 persons, and one located in a county or counties with a population of fewer than 650,000 persons, plan but not build three additional turnpike projects, set tolls on the projects subject to prior review by the Board of Transportation, condemn property by "quick-take," issue revenue bonds, and enter into partnership agreements with nonprofit entities, political subdivisions of the State, or private entities.

Use of Toll Revenue: Revenue derived from toll projects may only be used by the Authority for the following purposes: Turnpike Authority administration; Turnpike Project development, right-of-way acquisition, construction, operation, and maintenance, and Turnpike Project debt service. Spending on administration is limited to 5% of Turnpike Project revenue.

Bonds and Other Funding Provisions: The Authority may sell revenue bonds to finance all or a portion of its projects, in accordance with the State and Local Government Revenue Bond Act. The Department of Transportation (DOT) is authorized to participate in the cost of preconstruction, construction, maintenance, or operation of a Turnpike Project. Turnpike projects are subject to the equity distribution formula for State Highway Funds only to the extent that the project is funded from Highway Fund, Highway Trust Fund, or federal-aid funds that would otherwise be subject to the formula. Operation and project development costs of the Authority are an eligible administrative expense of the Highway Trust Fund. Any Highway Trust revenue allocated to the Authority must be repaid from toll revenue, subject to revenue bond conditions. Interest shall begin accruing on any unpaid balance owed to the Highway Trust Fund one year after the beginning of toll collection. The act requires the Authority to remove tolls from Turnpike projects, upon fulfillment of and subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority's revenue bonds.

Other Provisions: The Authority is prohibited from converting a non-tolled segment of the State highway system to a toll facility. State motor vehicle laws apply to Turnpike Authority projects. The act authorizes the Authority to use alternative contracting methods under specified circumstances. DOT is required to maintain an existing, comparable, nontoll route corresponding to each turnpike project. The employees of the Turnpike Authority are exempt from the State Personnel Act.

The act became effective October 3, 2002. (GSP)

Transfer DMV Enforcement to CCPS

S.L. 2002-190 (HB 314). See **State Government.**

Studies

Legislative Research Commission

State Ports

S.L. 2002-180, Sec. 2.1(2)a (SB 98, Sec. 2.1(2)a) authorizes the Legislative Research Commission to study State Ports. (GSP)

Motorcycle Safety

S.L. 2002-180, Sec. 2.1(2)b (SB 98, Sec. 2.1(2)b) authorizes the Legislative Research Commission to study motorcycle safety. (GSP)

New / Independent Studies / Commissions

Highway Trust Fund Study Committee

S.L. 2002-126, Sec. 26.2 (SB 1115, Sec. 26.2) extends the existence of the Highway Trust Fund Study Committee to the first day of the 2003 Session of the General Assembly, and expands its membership by adding two additional public members to the Committee. (GSP)

Commission to Study Commission Contracts for the Issuance of Motor Vehicle Registration Plates and Certificates

S.L. 2002-126, Sec. 26.15 (SB 1115, Sec. 26.15) creates an 11-member Commission to study commission contracts for the issuance of motor vehicle registration plates and certificates. The Commission is directed to report on or before the first day of the 2003 Session of the General Assembly. (GSP)

Referrals to Existing Commissions/Committees

Moped Identification Tag Program

S.L. 2002-170 (HB 1516) directs the Joint Legislative Transportation Oversight Committee to study the creation of a moped identification tag program administered by a third-party contractor approved by the Commissioner of Motor Vehicles. The Committee is directed to report its findings and recommendations on this issue to the General Assembly by March 1, 2003. (GSP)

Multiyear Registrations and Lengthening Multiyear Drivers Licenses

S.L. 2002-126, Sec. 26.7 (SB 1115, Sec. 26.7) directs the Joint Legislative Transportation Oversight Committee to study the feasibility of multiyear motor vehicle registrations and lengthening multiyear drivers licenses. (GSP)

Exceptions to Highway Weight Limits

S.L. 2002-126, Sec. 26.16(b) (SB 1115, Sec. 26.16(b)) directs the Joint Legislative Transportation Oversight Committee to study the rationale for and effect of the exceptions to the highway weight limits contained in G.S. 20-118(c). (GSP)

Interstate I-95 Tolls

S.L. 2002-180, Sec. 13.2 (SB 98, Sec. 13.2) authorizes the Joint Legislative Transportation Oversight Committee to study the feasibility of tolls on Interstate 95 from the South Carolina to Virginia borders. (GSP)

Referrals to Departments, Agencies, Etc.

School Sponsored Bus Transportation Safety

S.L. 2002-126, Sec. 26.11 (SB 1115, Sec. 26.11) directs the Division of Motor Vehicles to study the issue of school-sponsored bus transportation safety, and report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Education Oversight Committee by March 1, 2003. (GSP)

Currituck County to Northern Outer Banks Ferry Study

S.L. 2002-126, Sec. 26.12 (SB 1115, Sec. 26.12) directs the Department of Transportation to study and determine the feasibility of establishing ferry service from Currituck County to the northern Outer Banks. The Department is directed to submit its report on or before June 1, 2003. (GSP)

DOT Study Placing of Tolls on I-95

S.L. 2002-180, Part XVII (SB 98, Part XVII) directs the Department of Transportation (DOT) to study the feasibility of charging tolls on Interstate 95 and directing the use of toll proceeds for expansion and maintenance of I-95. DOT is directed to submit its report to the Joint Legislative Transportation Oversight Committee and House of Representative and Senate Appropriations Subcommittees on Transportation by March 1, 2003. (GSP)

Chapter 21
Vetoed Legislation

Vetoed Legislation

President Pro Tem and Speaker Appointments

SB 1283 made appointments to various public offices upon the recommendation of the President Pro Tem of the Senate and the Speaker of the House of Representatives. The bill also made various changes to existing boards and commissions. The bill was ratified by the General Assembly on October 4, 2002.

On November 3, 2002, Governor Michael F. Easley exercised the gubernatorial veto power for the first time, by vetoing this bill. In his veto message the Governor stated the following reasons for his veto:

> "Following adjournment of the legislative session, information has become available to the appointing authorities that several of the appointees, under the bill, to either new, expanded or existing boards and commissions do not meet the statutory requirements necessary to serve on the board or commission to which they were appointed. Two of the appointees are deceased, and at least five of the appointees are not qualified for other reasons, principally because they do not meet the statutory requirements for appointment or they have conflicts that statutorily prohibit their appointment. In addition, the bill mistakenly makes six appointments that are required to be made by the Governor."

Governor Easley called for the General Assembly to reconvene on November 13, 2002 to consider the question of an override of this veto. The General Assembly did reconvene, but referred the bill to the Committee on Rules and Operations of the Senate, then adjourned the session without voting on whether to override the veto. As a result, the veto stands and the bill did not become law. (SS)

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Guide to Staff Initials

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(BC) Brenda Carter
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(KCB) Karen Cochrane-Brown
(LA) Linda Attarian
(MH) Martha Harris
(MS) Mary Shuping
(MW) Martha Walston
(RJ) Robin Johnson
(RZ) Rick Zechini
(SI) Shirley Iorio
(SK) Sara Kamprath
(SR) Steve Rose
(SS) Susan Sitze
(TD) Tim Dodge
(TG) Trina Griffin
(TM) Theresa Matula
(WGR) Wendy Graf Ray
(WR) Walker Reagan