SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION - 2005

SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

2005

2005 GENERAL ASSEMBLY
2005 REGULAR SESSION
(INCLUDES 2004 EXTRA SESSION)

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
NOVEMBER 2005

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November 2005

To the Members of the 2005 Session of the 2005 General Assembly:

This publication contains summaries of all substantive legislation of general applicability and certain local legislation having general import from the 2004 Extra Session and the 2005 Regular Session. The session held on October 12, 2005, called by the Governor to consider his veto of House Bill 706 is a part of the Regular Session (N.C. Const. Art. II §22(7)). Most local acts 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. This year we have included in the appendix a list of the studies and reports authorized by the 2005 General Assembly. 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 staff members of the Research Division: Dee Atkinson, Cindy Avrette, Dickie Brown, Brenda Carter, Drupti Chauhan, Erika Churchill, Karen Cochrane-Brown, Judy Collier, Tim Dodge, Bill Gilkeson, George Givens, Kory Goldsmith, Trina Griffin, Tim Hovis, Jeff Hudson, Shirley Iorio, Robin Johnson, Sara Kamprath, Brad Krehely, Theresa Matula, Jennifer McGinnis, Joe Moore, Shawn Parker, Hal Pell, Giles S. Perry, Ben Popkin, Wendy Graf Ray, Walker Reagan, Barbara Riley, Steve Rose, and Susan Sitze. Canaan Huie, of the Bill Drafting Division and Martha Walston, of the Fiscal Research Division also contributed to this document. Drupti Chauhan and Jennifer McGinnis, of the Research Division are co-editors of this year's publication. Brad Krehely, Judy Collier and Lucy Anders of the Research Division also helped edit this document. The specific staff members contributing to each subject area are listed directly below the chapter heading for that area. 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. We would appreciate receiving any suggestions for this publication's improvement.

Yours truly,

Terrence D. Sullivan
Director of Research

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Agriculture and Wildlife

Erika Churchill (EC), Tim Dodge (TD), and Barbara Riley (BR)

Enacted Legislation

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S.L. 2005-20 (HB 752). See **Education**.

Extend Sunset/Animal Disease Prevention

S.L. 2005-21 (SB 210) extends the sunset provisions of S.L. 2001-12 to October 1, 2009. S.L. 2001-12 authorized the State Veterinarian, in consultation with the Commissioner of Agriculture and the approval of the Governor, to implement emergency procedures when necessary to combat the outbreak of an infectious animal disease. The sunset for the original bill was April 1, 2003. This was extended in S.L. 2003-6 to October 1, 2005.

This act became effective October 1, 2005. (BR)

Ban Internet Hunting

S.L. 2005-62 (HB 772) makes it unlawful to engage in "computer-assisted remote hunting" or to provide or operate a facility that allows others to engage in computer-assisted remote hunting if the wild animal or wild bird being hunted or shot is located in the State. Violation of the statute is a Class 1 misdemeanor. Violation of the statute will also result in a two-year suspension of the person's hunting license.

The act defines "computer-assisted remote hunting" as the use of a computer, equipment, or software to remotely control the aiming and firing of a firearm or other weapon that allows a person, not physically present at the location of the weapon, to hunt or shoot a wild animal or wild bird.

This act becomes effective December 1, 2005, and applies to acts occurring on or after that date. (BR)

Dog Training with Waterfowl and Game Birds

S.L. 2005-76 (HB 1206) amends the wildlife laws regulating the conduct of field trials and the training of dogs during closed seasons as follows:

- The training of dogs by hunters is subject to the conditions and restrictions imposed under the rules of the Wildlife Resources Commission (WRC).
- The use of weapons and ammunition is subject to the approval of the WRC.
- The training must occur on land owned by the hunter or on which the hunter has written permission to train dogs.
- Domestically raised waterfowl and game birds may be used provided that the birds are marked and sources documented as required by the WRC.

The act also requires the WRC to initiate rulemaking to implement the act at its first meeting after the act becomes law. Until the rules become effective, persons may train dogs as permitted under the act using shotguns and nontoxic #4 shot or smaller, and using only

domestically propagated birds that have been obtained and marked pursuant to the rules of the WRC.

This act became effective June 7, 2005. (BR)

Managed Hunts

S.L. 2005-82 (SB 844) authorizes the Wildlife Resources Commission to provide by rule for participation in managed hunts by persons under the age of 16 who do not have a hunting license. Applicants under 16 without a license must apply as a member of a party that includes a properly licensed adult.

This act became effective June 14, 2005. (BR)

Personal Watercraft Changes

S.L. 2005-161 (HB 702). See **Children and Families**.

Obstructing Use of Boat Ramp

S.L. 2005-164 (HB 1430) lowers the level of offense for violating the Wildlife Resources Commission (WRC) rules regarding parking at boat access and boat launch areas from a misdemeanor to an infraction and raises the amount of the fine from $10 to $50. The act also allows WRC employees with law enforcement powers and other law enforcement officers to have any vehicle towed that is improperly parked or left at an access or launch area. A vehicle would not be towed if it were in the location for the purpose of launching, operating, or retrieving watercraft.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (BR)

Amend Assault Assistance Animal

S.L. 2005-184 (SB 1058). See **Criminal Law and Procedure.**

Animal Exhibition Sanitation/"Aedin's Law"

S.L. 2005-191 (SB 266) provides for regulation of animal exhibitions at sanctioned agricultural fairs, as they may affect the public health and safety.

The act requires that the owner or operator of an animal exhibition at a sanctioned agricultural fair obtain an operation permit in order to be allowed to operate an animal exhibition for use by the general public. The Commissioner of Agriculture (Commissioner) is authorized to deny, suspend, or revoke a permit if the exhibition does not comply with this act or rules adopted pursuant to this act.

The act also directs the Commissioner to adopt rules concerning the operation of and issuance of permits for animal exhibitions at sanctioned agricultural fairs. These rules are to be developed by the Commissioner, with the advice and approval of the State Board of Agriculture, and in consultation with the Division of Public Health of the Department of Health and Human Services. The rules are to include requirements for the following:

- Education and signage to inform the public of health and safety issues.
- Animal areas.
- Animal care and management.
- Transition and nonanimal areas.
- Hand-washing facilities.

- Other requirements necessary for the protection of the public health and safety.

The Department of Health and Human Services is directed to conduct educational outreach to inform agricultural fair operators, exhibitors, agritourism business operators, and the general public about the health risks associated with diseases transmitted by physical contact with animals.

The act also authorizes the Commissioner to assess a civil penalty of not more than $5,000 for violation of provisions of the statutes or of the rules adopted pursuant to this section of the statutes. The Attorney General or a designated member of the Attorney General's staff will represent the Department of Agriculture and Consumer Services in all actions or proceedings in connection with this section.

This act became effective October 1, 2005. (BR)

Limit Liability for Agritourism Activities

S.L. 2005-236 (HB 329). See **Civil Law and Procedure**.

Pesticide Disposal Program

S.L. 2005-276, Sec. 11.1 (SB 622, Sec. 11.1) amends the statutes establishing the Pesticide Environmental Trust Fund, G.S. 143-468(b). The amendment directs that the monies from the Fund currently used by the Department of Agriculture and Consumer Services for environmental programs must be used to cover the costs of administering the Department's pesticide disposal program, including the salaries and support of staff for the program.

This section became effective July 1, 2005. (BR)

Uniform Regulation of Animal Shelters

S.L. 2005-276, Sec. 11.5 (SB 622, Sec. 11.5) requires animal shelters that are owned, operated, or maintained by counties or municipalities, or under contract with a county or municipality, to meet the same standards as those currently required of animal shelters operated by animal welfare societies or other nonprofit organizations devoted to animal welfare. Shelters owned, operated, or maintained by local governments, or under contract with local governments must obtain an annual certificate of registration and meet the standards of care prescribed by the Board of Agriculture for animal shelters. The act also amends the definition of animal shelter in G.S. 19A-23 to mean a facility which is used to house or contain seized, stray, homeless, quarantined, abandoned, or unwanted animals.

The act makes the duties of the Board of Agriculture in regulating animal shelters mandatory. These responsibilities include the adoption of standards for the care of animals in animal shelters, boarding kennels, and pet shops, prescribing the manner of transporting animals between licensed facilities, requiring records be kept by facilities regarding the identity and purchase and sale of animals at licensed facilities and the adoption of other rules to implement the Animal Welfare Act, Article 3 of Chapter 19A of the General Statutes.

The act also directs the Board of Agriculture to adopt rules on the euthanasia of animals in the possession or custody of persons licensed pursuant to the Animal Welfare Act. Euthanasia may be done only by a method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Society. If gas is an approved method of euthanasia, only commercially compressed carbon monoxide may be used and the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. The rules must also address training of persons participating in the euthanasia process.

The Attorney General's office is required to represent the Commissioner of Agriculture and the Department of Agriculture and Consumer Services in all actions and proceedings in connection with the Animal Welfare Act.

This section became effective October 1, 2005. (BR)

Increase Various Agriculture Fees

S.L. 2005-276, Sec. 42.1 (SB 622, Sec. 42.1) provides for an increase in various fees charged by the Department of Agriculture and Consumer Services.

The commercial feed annual registration fee set forth in G.S. 106-284.34(c) is increased from $3 to $5, for each commercial feed other than canned pet food. The annual registration fee for canned pet food is increased from $10 to $12.

The annual registration fee set forth in G.S. 106-284.40(b)(4) for commercial feed, other than canned pet food, which is distributed only in packages of 5 pounds or less is increased from $30 to $40.

The annual inspection fee set forth in G.S. 106-277.28(3) for seed dealers or growers who have seed offered for sale in the State is increased from 2 cents for each container of seeds weighing 10 pounds or more to 4 cents per container.

The licensing fee for public weightmasters set forth in G.S. 81A-52 is increased from $12 to $19.

A new section, G.S. 81A-12, is added to the General Statutes providing a comprehensive schedule of fees for weights that must be tested and certified to meet certain standards and tolerances, volumetric standard calibrations, tape measures and rigid rules, and liquid in glass and electronic thermometers.

This section became effective September 1, 2005. (BR)

Hunting and Fishing on Tribal Land

S.L. 2005-285 (HB 1012) provides that members of State-recognized Indian tribes may hunt and fish on tribal land without a hunting or fishing license issued by the Wildlife Resources Commission (WRC). Tribal land is defined as any real property owned by a tribe recognized under Chapter 71A of the General Statutes. A person hunting or fishing pursuant to this exemption must possess proper identification confirming membership in a State-recognized tribe and must produce such identification upon the request of a wildlife enforcement officer.

The act directs the Commission on Indian Affairs to provide the WRC with a list of properties in the State owned by State-recognized Indian tribes and to update the list whenever new land is added. The tribes must post the land to give notice of its ownership by the tribe.

This act became effective August 22, 2005. (BR)

Present-Use Value Buyout Credits

S.L. 2005-293 (HB 705). See **Finance**.

Amend Bear Baiting Prohibition

S.L. 2005-298 (HB 1395) authorizes the Wildlife Resources Commission (WRC) to adopt rules to regulate, restrict, or prohibit the placement of processed food products as bait for black bears upon a finding of one of the following:

- The bait is detrimental to the health of individual black bears.
- The bait is attracting or holding bears in an area to the extent that the natural pattern of movement and distribution is disrupted and the bears' vulnerability to

mortality factors, including hunting, is increased to a level that causes a concern for the population.

The act also authorizes the WRC to prescribe time limits during which hunting is prohibited in the baited areas.

This act became effective October 1, 2005. (BR)

Enhanced Voluntary Agricultural Districts

S.L. 2005-390 (HB 607) renames the "Farmland Preservation Act" the "Agricultural Development and Farmland Preservation Act", recodifies Article 61 of Chapter 106 of the General Statutes, adds a new Part 3 to Article 61 providing for the creation of Enhanced Voluntary Agricultural Districts (EVAD), and expands the purposes of the Farmland Preservation Act to encourage the development of programs to promote the growth and sustainability of farming as a part of farmland preservation.

EVADs may be created either by a county or municipality by ordinance. The requirements for the ordinance are the same as those for a Voluntary Agricultural District (VAD), with an additional requirement that the landowner execute a conservation agreement with the county or city that is irrevocable for at least 10 years. The purpose of creating an EVAD is to allow a county or city to offer additional benefits to farmland than otherwise available when the landowner is willing to enter into a conservation agreement for a minimum 10-year period. A county ordinance establishing an EVAD is effective within the unincorporated areas of the county. A city ordinance is effective within the corporate limits of the city. A city also may amend its ordinances to provide flexibility to farming operations within an EVAD within its planning jurisdiction. The additional benefits to farmland participating in an EVAD include:

- The farm may receive up to 25% of its gross revenues from the sale of nonfarm products and still qualify as a bona fide farm under G.S. 153A-340(b). Farmers have the burden to establish that the sale of nonfarm products does not exceed the 25% limitation.
- Participating farms will be eligible to receive cost share benefits at 90% (currently provided to limited resource farmers and beginning farmers under G.S. 143-215.74(b)(9)).
- State departments and agencies awarding grants are encouraged to give priority consideration to persons farming land in EVADs.
- Assessments for all utilities provided by a city or county to the farmland may be held in abeyance, with or without interest, until the farmland connects to the utility.

The act also amends the Farmland Preservation Trust Fund (Trust Fund) and program for the purchase of agricultural conservation easements in G.S. 106-744. The amendments:

- Clarify that counties may purchase agricultural conservation easements on property located outside a VAD.
- Add a provision that allows an agricultural conservation easement to permit agricultural uses as necessary to promote agricultural development associated with the family farm.
- Expand the purposes for which money in the Trust Fund may be used to include programs to promote the development and sustainability of farming and assist in the transition of farms to new farm families. To accomplish this, the money may be used for public and private programs to promote profitable and sustainable farming and funding conservation agreements to bring into or maintain farmland in active production of food, fiber, and other agricultural products.
- Establish the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee (Advisory Committee). The Advisory Committee is to consist of 19 members, as specified in the bill. The Committee is to advise the Commissioner of Agriculture on the prioritization and allocation of money from the Trust Fund, the

development of criteria for awarding funds, program planning and other areas that the money may be used to promote the growth and development of family farms.

- Provide for quarterly meetings of the Advisory Committee and require an annual report to the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources.

Finally, the act expands the definition of agriculture in G.S. 106-581.1. The new definition encompasses a broader range of activities including the improvement, conservation and maintenance of buildings and structures, marketing and selling of agricultural products when performed on the farm, agritourism, and other activities performed to add value to crops and livestock produced on the farm. This definition of agriculture is used in Article 61 of Chapter 106.

This act became effective September 13, 2005. (BR)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 2
Alcoholic Beverage Control

Dickie Brown (DB), Brenda Carter (BC), Hal Pell (HP), and Susan Sitze (SS)

Enacted Legislation

Amend Definition of Malt Beverage in ABC Law

S.L. 2005-277 (HB 392) raises the maximum limit on the alcohol content of malt beverages from 6% to 15%. Any malt beverage containing more than 6% alcohol by volume must bear a label clearly indicating its alcohol content.

This act became effective August 13, 2005. (BC)

Alcohol Sales - Campus Performing Arts Centers

S.L. 2005-327 (SB 974) permits the sale of beer and wine at a performing arts center located on property owned or leased by institutions of The University of North Carolina, provided the seating capacity of the performing arts center does not exceed 2,000 seats.

The act authorizes, for a limited period until December 31, 2005, the issuance of permits for the on-premises sale and consumption of beer and wine at a county-owned facility that is the site of a wine festival where 15 or more wineries will be exhibiting their wines. To qualify for the permit, the facility must be the site of a wine festival sponsored by a nonprofit organization, and the event must not last more than two days; the permits are valid only for that two-day period.

The act authorizes the ABC Commission to issue a special occasion permit to a sports facility occupied by a major league professional sports team, when the facility has suites available for sale or lease to patrons of the facility. The special occasion permit would authorize the patron who owns or rents a suite to make alcoholic beverages available in the suite as if the patron were a host of a reception, party, or other special occasion.

This act became effective August 26, 2005. (BC)

Amend ABC Transportation Limit

S.L. 2005-335 (HB 1390) makes the law governing the commercial transportation of alcoholic beverages consistent with the law governing the amounts of alcoholic beverages that may be purchased without a permit. It corrects a discrepancy that arose when the law was amended in 2001 to increase the purchase-transportation limit for unfortified wine from 20 to 50 liters; the commercial transportation limit was inadvertently left at 20 liters.

This act became effective August 26, 2005. (BC)

Amend the ABC Election Law

S.L. 2005-336 (HB 1416) authorizes elections for the on-premises sale of malt beverages and unfortified wine in any town or city that is the passenger terminus of a rail line that carries at least 60,000 passengers annually. One place affected by this act is Dillsboro, which is located in Jackson County and is the site of the main depot and headquarters for the Great Smoky Mountains Railroad.

This act became effective August 26, 2005. (BC)

Clarify Wineries Wholesale License

S.L. 2005-340 (HB 1389) amends the law governing wine distribution agreements to provide that a North Carolina winery acting as its own master wholesaler is not subject to certain provisions concerning the amendment, cancellation, or termination of an agreement with a wholesaler.

This act became effective August 26, 2005, and does not apply to any pending litigation or claims accruing before that date. (BC)

Wine-Tasting/Wineries Wholesale License Changes

S.L. 2005-350 (HB 1500) amends the law governing wine tasting permits by specifying the responsibilities of the permit holder and by clarifying the law concerning the participation of wineries, wine producers, and wholesalers. The retail permit holder is required to designate an employee to actively supervise the wine tasting and is responsible for any violations of the ABC law that occur in connection with the wine tasting. Any person pouring wine at a wine tasting must be at least 21 years old. Representatives of the winery, the wine producer, a wholesaler, or a wholesaler's employee may assist with a wine tasting by pouring samples for customers or checking a customer's identification.

The act provides for the issuance of a wine shop permit to retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings and classes and seminars about the selection, serving, and storing of wine. The wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine for off-premises consumption and authorizes wine tastings in accordance with applicable law. The application fee for the permit is $100; the renewal fee is $500.

The act expands the property on which grapes can be grown for the manufacture of wine by schools and colleges that offer a viticulture/enology course of study, by including the school's contracted property. The act also authorizes those schools to sell wine produced in viticulture/enology programs provided that the school has a wine wholesaler permit and obtains an ABC special event permit. Net proceeds from any sales must be used to support the viticulture/enology program at the school. The school may participate in no more than 6 winery special events per year and may sell no more than 25 cases of wine at each special event. The act also makes a conforming change to the statute concerning winery special event permits to allow viticulture/enology programs to obtain the permit, which enables the school to give free tasting samples of wines and to sell wine as provided in this act.

The act makes a clarifying change to the beer franchise law to provide that a franchise agreement exists when a supplier acquires (whether by purchase or otherwise) the right to manufacture or distribute a product.

This act became effective September 7, 2005.

Section 6 of this act concerns the use of biometric identification systems involving the sale of alcohol or tobacco products to minors. For additional information on this section, see **Criminal Law and Procedure.** (BC)

Wine Shipper Fee

S.L. 2005-380 (HB 1429) eliminates the $100 fee for the wine shipper permit that allows wineries to ship wine directly to individuals in North Carolina. Elimination of the fee allows North Carolina wineries to make direct shipments to states that require reciprocity.

The act clarifies the law concerning split-case fees by excluding the dividing of larger packages of alcohol from the definition of "giving things of value" within the meaning of the

statute defining prohibited activities for alcoholic beverages manufacturers, bottlers, or wholesalers.

The act transfers the North Carolina Grape Growers Council (Council) from the Department of Agriculture and Consumer Services to the Department of Commerce and makes the Secretary of Commerce the appointing authority for members of the Council. The Department of Revenue is directed to pay the $350,000 annual payment from excise tax revenues collected on unfortified wine bottled in the State to the Department of Commerce rather than the Department of Agriculture, for the benefit of the Council. The Department of Commerce is to work with the Department of Agriculture and North Carolina State University to serve the needs of grape growers.

This act became effective September 8, 2005; the elimination of the wine shipper permit fee applies to permit applications submitted on or after the effective date. (BC)

ABC Permit Issuance and Compliance

S.L. 2005-392 (HB 1174) amends the alcoholic beverage control laws regarding the issuance and revocation of permits at locations that are or become unsuitable to hold ABC permits.

The act defines "premises" for the purposes of Chapter 18B as all areas, inside or out, where the permittee has control of the property through a lease, deed, or other legal process. It also requires that prior to the issuance of an ABC permit to any business, the Alcoholic Beverage Control Commission (Commission) must determine whether the operation of the business would be detrimental to the neighborhood according to specific criteria. Before a permit is issued, the local governing board must provide the Commission with a Zoning and Compliance Form demonstrating that the business is in compliance with all applicable building and fire codes, and if applicable, has been notified that it is located in an Urban Redevelopment Area. The act gives the Commission the discretion to determine the suitability of a location to which a permit may be issued.

The act creates a mandatory revocation, absent a finding of mitigating evidence or circumstances, where a permittee or their employee has been found responsible by a court of competent jurisdiction or the Commission for two or more violations of knowingly allowing a violation of the gambling, disorderly conduct, prostitution, controlled substance, or felony criminal trademark laws. The mandatory revocation applies when 2 violations have occurred at a single licensed premises on separate dates within a 12-month period. This revocation is exempt from administrative hearing requirements, and applies to all permits issued to the particular location where the violations occurred.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SS)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 3
Children and Families

Drupti Chauhan (DC), Erika Churchill (EC), Ben Popkin, (BP), and Wendy Graf Ray (WGR)

Enacted Legislation

Amend Star-Rated Licensure/Child Care Facilities

S.L. 2005-36 (HB 707) amends child welfare laws to phase in modifications to the criteria used by the Secretary of Health and Human Services to issue star-rated licenses to child care facilities operating in North Carolina. The act removes compliance history from the star-rating equation, making it a basic requirement for licensure. A higher minimum compliance requirement will be set (75% rather than the previous 60%) over a shorter time period (18 months rather than the previous 3 years). The star-rating assigned to a child care facility will be based on points earned in the areas of program standards and staff education.

Facilities applying for new licenses on or after January 1, 2006, will be required to comply with these new standards. By January 1, 2008, all facilities will be held to the new standards.

This act becomes effective January 1, 2006. (BP)

Allow Name Change Where Divorce Granted

S.L. 2005-38 (HB 508) allows a person who has received a divorce to apply for a name change in the county in which the divorce was granted. Previously, a person was allowed to apply for a name change only in their county of residence.

This act became effective May 12, 2005, and applies to petitions filed 90 days after that date. (WGR)

Establish Child Assessment Responses

S.L. 2005-55, Secs. 1-12 (HB 277, Secs. 1-12) amend the Juvenile Code to allow counties to implement an alternative response system previously piloted in 52 counties, known as the Multiple Response System (MRS), to assess reports of child abuse, neglect, and dependency. The act makes the following changes:

- Defines two types of assessments of reports of abuse, neglect, or dependency to be performed as determined by the director of the county department of social services:
  - Family assessment response – in response to reports of child neglect and dependency.
  - Investigative assessment response – in response to reports of child abuse and selected reports of child neglect and dependency.
- Revises language throughout the Juvenile Code to reflect the MRS approach calling for the director of the county department of social services to use one of the two assessment responses detailed above rather than an investigation.
- Amends the law concerning interference with an assessment to require the director of the county department of social services to provide a concise statement of the basis for initiating the assessment.

These sections became effective October 1, 2005.

Section 13 of this act requires the Department of Health and Human Services to continue to assess the alternative response system of child protection. For additional information on this section, see **Health and Human Services.** (BP)

Adoptive Families/Department of Health and Human Services/Criminal Checks

S.L. 2005-114 (HB 451) amends the law that requires criminal history background checks for prospective adoptive parents of a minor in custody or placement responsibility of a county department of social services. The act requires criminal history background checks for any individual 18 years of age or older who resides in the household of a prospective adoptive parent. This expansion of criminal history background checks keeps the State in compliance with federal requirements for continued receipt of federal funding to support child welfare services under Title IV-B of the Social Security Act.

The act also expands the reach of the criminal history background check authority of the Department of Health and Human Services (Department) beyond its own employees and job applicants to include independent contractors and their employees when doing contract work with the Department and persons approved to perform volunteer services for the Department.

This act became effective June 24, 2005. (BP)

Termination of Parental Rights/Murder of Parent by Parent

S.L. 2005-146 (HB 97) adds as an additional ground upon which the court may terminate parental rights – the commitment or the murder or voluntary manslaughter of the other parent of the child. The petitioner may prove either the elements of the crime or offer proof that a court of competent jurisdiction has convicted the respondent of the crime. The act also requires the court to take into consideration during adjudication whether the murder or manslaughter of one parent by the other was committed in self-defense or in the defense of others or if there was substantial evidence of other justification.

This act became effective June 30, 2005, and applies to termination of parental rights proceedings filed on or after that date. (EC)

Personal Watercraft Changes

S.L. 2005-161 (HB 702) increases the minimum age for persons who may operate personal watercraft in North Carolina. The minimum age increases from 12 to 14. Persons who are 12 years old by November 1, 2005, are exempted from this change.

This act became effective November 1, 2005. (DC)

Adjust Adoption Procedure

S.L. 2005-166 (HB 532) clarifies that an uninvolved biological father cannot halt or unnecessarily delay an adoption proceeding; allows the clerk to waive notice in certain circumstances; and requires an explanation by the parties of any failure to comply with the Interstate Compact on Placement of Children. The act provides that if a court determines that consent to adopt is not needed from the man the petitioner claims to be or is named as the biological, or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, that father does not get notice of an adoption petition filed within three months of the child's birth and cannot participate in that adoption. This applies the same to pre-petition determinations and post-petition determinations.

The act also requires that an adoption petition be accompanied by a statement explaining any failures to comply with the Interstate Compact on the Placement of Children, if there are any non-compliances, and allows the court to waive, for cause, the need for notice to the non-adopting spouse when the other spouse has filed an adoption petition.

This act became effective October 1, 2005, and applies to actions filed on or after that date. (EC)

Amend Postseparation Support Laws

S.L. 2005-177 (HB 923). See **Civil Law and Procedure**.

Amend Family Law Arbitration Act

S.L. 2005-187 (HB 1319). See **Civil Law and Procedure**.

Interstate Compact for Juveniles

S.L. 2005-194 (HB 1346) enacts a revised Interstate Compact for Juveniles (Compact) to provide for the supervision and transfer of juveniles between states. The Interstate Compact on Juveniles was originally established in 1955 and adopted in North Carolina in 1963. The Compact provides the procedures to regulate the movement of juveniles across state lines when a juvenile has run away from home without the consent of a parent or guardian, has absconded from probation or parole or escaped from an institution and is located in another state, has a pending hearing and runs away to another state, or is under court supervision and wants to reside in another state. A Compact Administrator, designated by the Governor, is charged with acting jointly with Administrators in other compacting states and adopting rules and regulations to carry out the terms of the Compact.

This act repeals the current Interstate Compact on Juveniles and enacts a new Compact that includes the following provisions:

Purpose. – The act sets out the following purposes of the Compact:

- To ensure that juveniles subject to the Compact are provided adequate supervision and services.
- To ensure the safety of the public.
- To return juveniles who have run away, absconded, or escaped from supervision or control, or have been accused of a juvenile offense.
- To provide for the cooperative institutionalization in public facilities in member states of delinquent youth needing special services.
- To effectively track and supervise juveniles.
- To equitably allocate the costs, benefits, and obligations of the compacting states.
- To establish procedures for supervising and transferring juveniles across state lines.
- To establish a system of uniform data collection on juveniles.
- To monitor compliance with the Compact.
- To coordinate training and education for officials involved in activities under the Compact.
- To coordinate implementation of the Compact with other compacts affecting juveniles.

Interstate Commission for Juveniles. – The act creates the Interstate Commission for Juveniles (Commission) to administer the Compact, including adopting rules to carry out the purposes and obligations of the Compact. The Commission is made up of commissioners from each compacting state and other individuals who are not commissioners but who are members of interested organizations. The noncommissioner members of the Commission are ex officio, nonvoting members. Each state represented at a Commission meeting is entitled to one vote.

The Commission is to meet at least once a year and establish an executive committee to oversee the day-to-day administration of the Compact and the enforcement of its provisions. The Commission is also required to collect and report standardized data on the interstate movement of juveniles and report annually on its activities to compacting states' legislatures, governors, judiciary, and state councils. In order to cover its operating costs, the Commission will collect an annual assessment from each compacting state.

State Councils for Interstate Juvenile Supervision. – Each compacting state is required to create a State Council for Interstate Juvenile Supervision (State Council). Membership is to include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the Compact Administrator. All terms are for three years. The State Council oversees the state's participation in Interstate Commission activities. In North Carolina, the State Council consists of the Contract Administrator and the following 10 members:

- One representative of the executive branch, appointed by the Governor.
- One member from a victim's assistance group, appointed by the Governor.
- One at-large member, appointed by the Governor.
- One member of the Senate, appointed by the President Pro Tempore.
- One member of the House of Representatives, appointed by the Speaker.
- A district court judge, appointed by the Chief Justice of the Supreme Court.
- Four members representing the juvenile court counselors, appointed by the Secretary of the Department of Juvenile Justice and Delinquency Prevention.

The State Council is required to meet at least twice a year, advise the Compact Administrator on participation in Interstate Commission activities, and is authorized to adopt rules necessary to implement and administer the Compact. In North Carolina, the Secretary of the Department of Juvenile Justice and Delinquency Prevention, or the Secretary's designee, is the Compact Administrator, North Carolina's Commissioner on the Interstate Commission, and the chairperson of the State Council.

Enforcement. – The Interstate Commission is authorized to impose any of the following penalties if it finds that a compacting state has defaulted on its obligations under the Compact:

- Remedial training and technical assistance.
- Alternative Dispute resolution.
- Fines.
- Suspension or termination of membership in the Compact.
- Initiation of legal action in federal district court against any compacting state to enforce compliance with the provisions of the Compact.

Funding. – The act provides that the General Assembly is not obligated to appropriate funds to implement the act. The Department of Juvenile Justice and Delinquency Prevention is required to implement the act with funds appropriated or available to the Department.

The provisions of this act that establish the new Compact will be effective when and if 35 states have adopted the Compact. The provision repealing the current Compact will be effective when all states have adopted the Compact. The rest of the act became effective July 15, 2005. (WGR)

Parenting Coordinator Established

S.L. 2005-228 (HB 1221) establishes a procedure for the appointment of a parenting coordinator in child custody cases. A "parenting coordinator" is an impartial person appointed by the court in a custody action. The parties may agree to the appointment of a parenting coordinator at any time during the proceeding. If the parties do not agree, however, the court may appoint a parenting coordinator in high-conflict cases if it is in the best interest of the minor child and the parties are able to pay for the costs. A "high-conflict case" is a child custody action involving minor children where the parties demonstrate an ongoing pattern of excessive litigation, anger and distrust, verbal abuse, physical aggression or threats of physical aggression, difficulty in communicating about and cooperating in the care of the minor children, or other conditions

that the court determines warrant the appointment of a parenting coordinator. The order appointing the parenting coordinator must specify the coordinator's authority, which is limited to matters that will aid the parties to:

- Identify disputed issues.
- Reduce misunderstandings.
- Clarify priorities.
- Explore possibilities for compromise.
- Develop methods of collaboration in parenting.
- Comply with the court's order of custody, visitation, or guardianship.

However, the parenting coordinator also has the authority to decide issues that are not covered by a parenting plan and on which the parties cannot agree. The parenting coordinator's decision is binding on the parties until the court reviews the decision. The parenting coordinator may not provide professional services or counseling to the parties, and must refer financial issues to the parties' attorneys. In order to be eligible to be included on a district court's list of parenting coordinators, a person must meet specific requirements and attend seminars that provide continuing education, group discussion, and peer review and support. The court retains jurisdiction over the case and all final decisions. The parties pay the parenting coordinator's fees, and the court may terminate the appointment of the parenting coordinator for good cause. A parenting coordinator is not liable for damages for acts or omissions of ordinary negligence arising out of his or her duties as a parenting coordinator. This immunity does not, however, apply to actions arising out of the operation of a motor vehicle.

This act became effective October 1, 2005. (DC)

Exploitation/Elderly or Disabled Adult

S.L. 2005-272 (HB 1466). See **Criminal Law and Procedure**.

Collaboration Among Departments on School-Based Child and Family Team Initiative

S.L. 2005-276, Sec. 6.24 (SB 622, Sec. 6.24) establishes the School-Based Child and Family Team Initiative (Initiative) and requires the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, the Department of Public Instruction, the State Board of Education, and other State agencies to collaborate in the development and implementation of the Initiative. This section also establishes the North Carolina Child and Family Leadership Council (Council) to review and advise the Governor in the development of the Initiative and to ensure active participation and collaboration by all State agencies and their local counterparts. The Council is required to report semiannually on progress made and goals achieved to the Office of the Governor, the Joint Appropriations Committees and Subcommittees on Education, Justice and Public Safety, and Health and Human Services, and the Fiscal Research Division.

Purposes and Duties. – The Initiative will identify and coordinate appropriate community services and supports for children who are at risk of school failure or out-of-home placement in order to address the physical, social, legal, emotional, and developmental factors that affect academic performance. It will be based on the following principles:

- Development of a strong infrastructure of interagency collaboration.
- One child, one team, one plan.
- Individualized strength-based care.
- Accountability.
- Cultural competence.
- Access to the system for at risk children through any participating agency.

- Services provided through a unified Child and Family Plan that is outcome-oriented and evaluation-based.
- Effective and cost efficient services delivered in the most natural settings possible.
- Out-of-home placements as a last resort only.
- Family and consumer involvement in decision making.

Program Goals and Services. – State and local agencies will be required to ensure that children receiving services are appropriately served by:

- Increasing capacity of schools to address needs of children.
- Ensuring children are screened to identify needs and assessed periodically to determine progress.
- Developing uniform screening mechanisms and ways to measure children's progress.
- Promoting practices that are known to be effective based on research or national best practice standards.
- Reviewing services provided by State agencies to ensure children's needs are met.
- Eliminating cost shifting and facilitating cost sharing among governmental agencies.
- Participating in a local memorandum of agreement signed annually by the participating superintendent of the local LEA, directors of the county departments of social services and health, director of the local management entity, the chief district court judge, and the chief district court counselor.

Local Level Responsibilities. – In coordination with the North Carolina Child and Family Leadership Council, the local board of education is required to establish the Initiative at designated schools and appoint Child and Family Team Leaders (a school nurse and a school social worker.) Local management entities that have selected schools in their catchment areas must appoint Care Coordinators, and departments of social services that have selected schools in their catchment areas must appoint Child and Family Team Facilitators. Care Coordinators and Child and Family Team Facilitators are responsible for working with schools in their catchment areas and providing training to school-based personnel. The Child and Family Team Leaders are required to identify and screen at risk children. Based on screening results, responsibility for developing, convening, and implementing the Initiative is as follows:

- School personnel must take the lead for those whose primary unmet needs are related to academic achievement.
- The local management entity must take the lead for those whose primary unmet needs are related to mental health, substance abuse, or developmental disabilities and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
- The local department of public health must take the lead for those whose primary unmet needs are health-related.
- Local departments of social services must take the lead for those whose primary unmet needs are related to child welfare, abuse, or neglect.
- The chief district court counselor must take the lead for those whose primary unmet needs are related to juvenile justice issues.

School-Based Child and Family Team Leaders are required to provide data to the North Carolina Child and Family Leadership Council for inclusion in their report to the North Carolina General Assembly.

Local Advisory Committee. – In each county with a participating school, the superintendent of the local LEA is required to identify an existing cross agency collaborative or council, or form a new group, to serve as a local advisory committee for the Initiative. The committee must include the directors of the county departments of social services and health, the directors of the local management entity, the chief district court judge, the chief district court counselor, and representatives of other agencies providing services to children. The committee may designate existing cross agency collaboratives or councils as working groups or to provide assistance in accomplishing established goals.

This section became effective July 1, 2005. (WGR)

Comprehensive Treatment Services Program

S.L. 2005-276, Sec. 10.25 (SB 622, Sec. 10.25). See **Health and Human Services**.

Child Support Program/Enhanced Standards

S.L. 2005-276, Sec. 10.43 (SB 622, Sec. 10.43) requires the Department of Health and Human Services (Department) to develop and implement performance standards for all State and county child support enforcement offices in North Carolina. The Department must develop these standards by evaluating other public and private models and national standards. The standards must include:

- Cost per collection.
- Consumer satisfaction.
- Paternity establishments.
- Administrative costs.
- Orders established.
- Collections on arrearages.
- Location of absent parents.
- Other related performance measures.

This section also requires the Department to monitor the performance of each office and implement a system of reporting that allows offices to review their performance and the performance of other offices. The Department must publish an annual performance report including statewide and local office performance.

The Department is required to report on its progress to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by May 1, 2006.

This section became effective July 1, 2005. (WGR)

Multiple Response System

S.L. 2005-276, Sec. 10.45 (SB 622, Sec. 10.45) directs the Department of Health and Human Services, Division of Social Services, to continue working with local departments of social services to implement a multiple response system of child protection, which provides a family-centered approach to child protective services in which local departments use family assessment tools and family support principals when responding to selected reports of child abuse, neglect, and dependency. The Department is to expand the project using State appropriations and any other non-State funding that can be identified.

This section became effective July 1, 2005. (WGR)

Intensive Family Preservation Services Funding and Performance Enhancements

S.L. 2005-276, Sec. 10.51A (SB 622, Sec. 10.51A) establishes the Intensive Family Preservation Services Program to be implemented statewide on a regional basis and to provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and in cases of abuse where a child is not at imminent risk of removal. The Department of Health and Human Services (Department) must require that any program or entity that receives funding for the purpose of Intensive Family Preservation Services provide information and data that allows for:

- An established follow-up system with at least six months of follow-up services.
- Detailed information on specific interventions applied.

- Cost-benefit data.
- Data on long-term benefits, obtained by tracking families through the process.
- The number of families remaining intact and associated interventions.
- The number and percentage by race of children receiving services compared to the ratio of their distribution in the general population involved with Child Protective Services.

The Department is required to report on the implementation of this section no later than February 1, 2006, to the House 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, 2005. (WGR)

Governor's Vision Care Program Established

S.L. 2005-276, Sec. 10.59F (SB 622, Sec. 10.59F). See **Health and Human Services**.

More at Four

S.L. 2005-276, Sec. 10.67 (SB 622, Sec. 10.67) appropriates $66,646,653 for the 2005-2006 fiscal year and the same amount for the 2006-2007 fiscal year to implement "More at Four," a voluntary prekindergarten program for at-risk four-year-olds.

The Department of Health and Human Services (DHHS) and the Department of Public Instruction (DPI), with guidance from the More at Four Pre-K Task Force (Task Force), are directed to continue the implementation of the "More at Four" prekindergarten program. The program is to be consistent with standards and assessments established jointly by DHHS and DPI and must include the following:

- A process and system for identifying children at risk of academic failure.
- A process and system for identifying children who are not being served first priority in formal early education programs who demonstrate educational needs and are eligible to enter kindergarten in the next school year, as well as children who are underserved.
- A curriculum or several curricula recommended by the Task Force. The recommended research-based curricula must:
  - Focus primarily on oral language and emergent literacy.
  - Engage children through key experiences and provide background knowledge needed for formal learning and successful reading.
  - Involve active learning.
  - Promote measurable kindergarten language-readiness skills with an emphasis on emergent literacy and mathematical skills.
  - Develop skills that will prepare children emotionally and socially for kindergarten;
- An emphasis on ongoing family involvement.
- Evaluation of child progress through pre- and post-assessment of children in the statewide evaluation, as well as ongoing assessment of the children by teachers.
- Guidelines to reimburse local school boards and systems, private child care providers, and other entities willing to establish and provide prekindergarten programs to serve at-risk children.
- A system built on existing local school boards and systems, private child care providers, and other entities that show the ability to establish or expand prekindergarten capacity.
- A quality control system.

- Standards for minimum teacher qualifications. A portion of the classroom sites initially funded must have at least one teacher who is certified or provisionally certified in birth-to-kindergarten education.
- A local contribution.
- A system of accountability.
- Consideration of the reallocation of existing funds.

DHHS is further directed to plan for the expansion of the "More At Four" program within existing resources to include four- and five-star-rated centers and schools serving four-year-olds, develop guidelines for these programs, and analyze guidelines for use of the "More At Four" funds, State subsidy funds, and Smart Start subsidy funds. The four- and five-star-rated centers that choose to become "More At Four" programs shall receive curricula and access to training and be considered for Teacher Education and Compensation Helps (T.E.A.C.H.) funding.

The "More at Four" program must review the number of slots filled by counties on a monthly basis and shift the unfilled slots to counties with waiting lists. The shifting of slots must occur through December 30, 2005, at which time any remaining funds for slots unfilled must be used to meet the needs of the waiting list for subsidized child care.

DHHS, DPI, and the Task Force must submit a report by February 1, 2006, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The final report must include the following:

- The number of children participating in the program.
- The number of children participating in the program who have never been served in other early education programs.
- The expected expenditures for the program and the source of the local matches.
- The location of program sites and the corresponding number of children participating in the program at each site.
- Activities involving Child Find.
- A comprehensive cost analysis of the program, including the cost per child served by the program.
- The plan for expansion of "More at Four" through existing resources.

The "More at Four" program must establish income eligibility requirements for the program for the 2005-2006 and the 2006-2007 fiscal years. The requirements must not exceed 75% of the State median income to make the program consistent with the child care subsidy requirements. Up to 25% of children enrolled may have family incomes in excess of 75% of median income if they have other designated risk factors. The "More at Four" program funding cannot supplant any funding for classrooms serving four-year-olds as of the 2003-2004 fiscal year.

The Division of Child Development in DHHS is directed to review and evaluate the early literacy project in Davie County and consider incorporation of this curriculum into the "More at Four" program.

This section became effective July 1, 2005. (SI)

All-Terrain Vehicle Regulation

S.L. 2005-282 (SB 189) provides regulations for the sale and operation of all-terrain vehicles (ATVs) in North Carolina. The act will regulate ATVs in the following ways:

Definition. – The act defines "ATV" as a motorized off-highway vehicle designed to travel on three or four low-pressure tires with a seat designed to be straddled and handlebars for steering.

Age Restrictions. –

- No one under age eight will be permitted to operate an ATV.

- Children ages 8, 9, 10, and 11 only will be permitted to operate ATVs with engine capacity less than 70 cubic centimeter displacement and only with supervision of a person who is 18 or older.
- Children ages 12, 13, 14, and 15 only will be permitted to operate ATVs with engine capacity up to and including 90 cubic centimeter displacement and only with supervision of a person who is 18 or older.
- Only persons who are 16 or older will be permitted to operate an ATV with engine capacity greater than 90 cubic centimeter displacement.

The restrictions applicable to children from 8-15 years old will not apply if the child was born on or before August 15, 1997, and proof can be shown that the parent or legal guardian owned the ATV prior to August 15, 2005. A parent or legal guardian who knowingly permits a child to operate an ATV in violation of these restrictions will be subject to an infraction. Selling an ATV for use in violation of age restrictions will also be an infraction.

Passengers. – Operators of ATVs will not be permitted to carry passengers unless the ATV is specifically designed to carry passengers in addition to the operator.

Equipment Requirements. – Every ATV sold or operated in the State will be required to meet the following equipment standards:

- Must be equipped with a brake system.
- Must be equipped with an effective muffler system.
- Must be equipped with a spark arrester.

Prohibited Acts. – Owners and operators of ATVs will be prohibited from doing any of the following:

- Operating an ATV without eye protection and a helmet.
- Authorizing use of an ATV contrary to the provisions in this act.
- Operating an ATV while under the influence of drugs or alcohol.
- Operating an ATV in a careless and reckless manner so as to endanger persons or property.
- Operating an ATV on a public street, road, or highway, except to cross.
- Operating an ATV on an interstate or limited-access highway.
- Operating an ATV during hours of darkness without displaying a lighted headlamp and taillamp.

Safety Training. – All operators of ATVs who were born on or after January 1, 1990, will be required to possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute. This requirement will be effective October 1, 2006.

Penalties. – Violation of any of the provisions of this act is an infraction subject to a fine up to $200.

Exceptions. – The act also will provide exemptions from ATV regulations for individuals engaged in farming operations and hunting or trapping activities.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (WGR)

Child Custody/Guardianship Jurisdiction

S.L. 2005-320 (HB 801) amends the Juvenile Code and Chapter 50 of the General Statutes to allow the courts to address the issue of conflicting jurisdiction in juvenile cases.

Jurisdiction. – The act provides that when a juvenile petition is filed, any other civil custody action in the State is automatically stayed, unless the actions are consolidated or the court in the juvenile proceeding lifts the stay. If an order entered by the court in a juvenile proceeding and an order in a civil custody action conflict, the order in the juvenile proceeding controls so long as the juvenile court continues to exercise jurisdiction in the juvenile proceeding. If the two actions are in the same judicial district, the court in the juvenile proceeding may order that the civil action for custody be consolidated with the juvenile proceeding.

If the two actions are in different judicial districts, the court in the juvenile proceeding, for good cause and after consulting with the court in the other district, may do any of the following:

- Transfer the civil action to the county in which the juvenile proceeding is filed.
- Change the venue of the juvenile proceeding to that of the civil action.
- Proceed in the juvenile action while the civil action remains stayed.
- Stay the juvenile proceeding and allow the civil action to proceed.

Retention and Termination of Jurisdiction. – The act states that the court in a juvenile proceeding may not modify or enforce any order previously entered in the proceeding after the court's jurisdiction terminates and that the legal status of the juvenile and the custodial rights of the parties return to pre-petition status when the court's jurisdiction terminates, unless an order is filed in a separate civil action. However, termination of the court's jurisdiction in an abuse, neglect, or dependency proceeding does not affect any of the following:

- A civil child custody order entered pursuant to G.S. 7B-911.
- An order terminating parental rights.
- A pending action for termination of parental rights unless the court orders otherwise.
- An action in which the juvenile is alleged to be or has been adjudicated undisciplined or delinquent.
- Any new petition regarding the juvenile that is filed alleging abuse, neglect, or dependency.

Petition. – The act clarifies that the local department of social services is to attach an affidavit regarding the status of the juvenile that is the subject of the petition, to any petition that is filed.

Civil Child-Custody Order. – The court is allowed to enter an order that awards civil custody of the juvenile to a parent or other appropriate person, and terminates the court's jurisdiction in the juvenile proceeding. When entering such an order, the court must require the order to be filed in an existing civil action relating to the custody of the juvenile, or instruct the clerk to treat the order as the initiation of a civil action for custody. The court may enter the civil custody order and terminate its jurisdiction only if:

- The court makes findings and conclusions that support the entry of the custody order under Chapter 50 of the General Statutes.
- In a separate order terminating the juvenile court's jurisdiction, the court finds:
  - The juvenile's status and the issues are in the nature of a private custody agreement and there is no need for continued State involvement on behalf of the juvenile.
  - At least six months have passed since the court determined that the custody placement is the permanent plan for the juvenile.

The act also makes a conforming change to the civil custody action statutes to provide that the civil action is stayed when the juvenile that is the subject of the civil action is also the subject of an abuse, neglect, or dependency proceeding.

This act became effective October 1, 2005, and applies to juvenile proceedings and civil actions pending or filed on or after that date. (DC)

Testamentary Recommendation of Guardian

S.L. 2005-333 (HB 1394). See **Property, Trusts, and Estates**.

Domestic Violence Victims Empowerment Act

S.L. 2005-343 (HB 1311). See **Criminal Law and Procedure**.

Domestic Violence Recommendations

S.L. 2005-356 (HB 569). See **State Government**.

Child Support Reforms

S.L. 2005-389 (HB 1375). See **Civil Law and Procedure**.

Expedite Juvenile Proceedings/Guardians Ad Litem

S.L. 2005-398 (HB 1150) amends the juvenile protective services statutes to address the number and timing of appeals and to provide for the appointment of certain guardians ad litem by:

- Allowing the affected parent, guardian, or custodian or that person's counsel to give notice of appeal of that order ceasing reasonable efforts in order to preserve that parent's right to appeal.
- Providing for the appointment of "provisional counsel" by the clerk of superior court upon the filing of a juvenile services petition. The court may revisit the issue of court appointed counsel at any time during the proceeding. The provisional counsel would be confirmed at the first hearing by the court if all of the following apply:
  - The parent appears at the hearing.
  - The parent qualifies for court-appointed counsel (indigent).
  - The parent has not already retained counsel.
  - The parent does not waive his or her right to counsel.
- Clarifying that a parent-respondent under age 18 is entitled to a guardian ad litem for the juvenile proceeding regarding that parent's child and that appointment would not affect any guardian ad litem appointment under a proceeding in which the juvenile parent is the juvenile alleged to be abused, neglected, or dependent. The act also allows for the appointment of a guardian ad litem for a parent, upon motion of any party or the court's own motion, if the court determines there is reasonable belief that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest.
- Clarifying that the communications between the guardian ad litem and the parent and the parent's counsel are privileged and confidential, and sets forth the practices a guardian ad litem for the parent may engage in:
  - Enable the parent to enter consent orders, if appropriate.
  - Facilitate service of process on the parent.
  - Assure that necessary pleadings are filed.
  - Assist the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.
- Requiring that if the court does not enter the adjudication, dispositional, review, or termination of parental rights (TPR) dispositional order within 30 days, the clerk or case manager is to schedule the case for hearing at the first juvenile matter session of court to determine why the order has not been entered, and then the order shall be entered within 10 days of the second hearing.
- Adding a statutory time frame for the dispositional hearing – between immediately following the adjudication and 30 days after the adjudication. The default would be immediately following the adjudication hearing.
- Adding a new section to require a county department of social services (DSS) with placement authority over a juvenile to notify that juvenile's guardian ad litem when the juvenile is to be moved, unless it is an emergency. In the case of an emergency, DSS is to notify the guardian ad litem within 72 hours.

- Restricting the parties to a post-TPR placement hearing and a review of the permanency plan hearing. Any parent whose rights have been terminated and that termination is not appealed could not participate in either of those hearings.
- Clarifying that a "final order" is any of the following:
  - Any order finding absence of jurisdiction.
  - Any order that in effect determines the action and prevents a judgment from which appeal might be taken.
  - Any order of disposition after an adjudication that a juvenile is abused, neglected, or dependent.
  - Any order modifying custodial rights.
- Stating that for juvenile protective services and termination of parental rights purposes ONLY the following orders are appealable:
  - Any order finding absence of jurisdiction.
  - Any order, including the involuntary dismissal of a petition, which in effect determines the action and prevents a judgment from which appeal might be taken.
  - Any initial order of disposition and the adjudication order upon which it is based.
  - Any order, other than a nonsecure custody order, that changes legal custody of a juvenile.
  - An order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection.
  - Any order that terminates parental rights or denies a petition or motion to terminate parental rights.
- Requiring that the notice of appeal shall be made within 30 days of the entry and service of the order being appealed, in writing, signed by the appealing party and that party's attorney, and made by one of the following parties:
  - A juvenile acting through their guardian ad litem.
  - A county DSS.
  - A parent, guardian, or custodian adversely affected by the order.
  - Any party that sought but failed to obtain a TPR.
- Requiring the court to consider all of the following when making the decision to terminate or not terminate parental rights upon a finding of at least one of the grounds for termination of parental rights:
  - The age of the juvenile.
  - The likelihood of adoption of the juvenile.
  - Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
  - The bond between the juvenile and the parent.
  - The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
  - Any relevant consideration.
- Making other miscellaneous and conforming changes.

This act became effective October 1, 2005, and applies to petitions or actions filed on or after that date. (EC)

Responsible Individuals List/Expunction Process

S.L. 2005-399 (HB 661) authorizes the Department of Health and Human Services to place the names of individuals who have been identified by county departments of social services as responsible in cases of abuse or serious neglect of juveniles on a responsible individuals list and to release those names to providers of child care, foster care, or adoption services that need to determine the fitness of individuals to care for or adopt children. A person whose name is placed on the list is provided with a process to have his or her name expunged from the list if the

person is determined not to be a "responsible individual." The act also makes it a Class 3 misdemeanor for a person to give, pass along, or attempt to access information contained on the central registry or the responsible persons list unless authorized to do so.

This act became effective October 1, 2005, and applies to investigative assessment responses initiated on or after that date. (BP)

Amend Displaced Homemaker Laws/Up Fund Fees

S.L. 2005-405 (HB 1635) amends the laws pertaining to displaced homemakers and increases the filing fee for absolute divorce from $90 to $125, with the increase of $35 being remitted to the State Treasurer for the Displaced Homemakers Fund.

Previously, a displaced homemaker was defined as an individual who (1) has worked in his or her household for at least five years and has provided unpaid household services, (2) is unable to secure employment due to lack of training or experience, and (3) is unemployed or underemployed, and has been dependent on the income of another, but no longer has access to that income or is within two years of losing support or eligibility for public assistance. This act removes the requirement that the displaced homemaker must have worked in the home for at least five years.

The act also makes conforming changes to the Displaced Homemakers Fund grant program by deleting the factors to be considered in determining where to locate a center, detailing factors that must be considered in establishing new programs and the grant criteria for funding new or existing programs, and by capping the number of grants to be provided at 35.

This act became effective October 1, 2005. (EC)

Clarify Definition of Child Care

S.L. 2005-416, Secs. 1-3.1 (HB 1517, Secs. 1-3.1) add drop-in or short-term care provided by an employer for its part-time employees to the exceptions from the statutory definition of child care. North Carolina law sets out requirements for the provision of child care. Child care facilities must meet certain minimum standards to be licensed to operate, and it is unlawful to operate a child care facility without being licensed. The definition of "child care facility" includes child care centers, family child care homes, and other child care arrangements. However, the definition of "child care" specifically excludes a number of arrangements, including drop-in or short-term care provided while parents participate in non-employment related activities and where the parents are on the premises or otherwise easily accessible. Previously, there was no exception that applied to drop-in or short-term care provided by employers for their employees.

The act creates an exception from the definition of child care for drop-in or short-term care provided by an employer for its part-time employees under the following circumstances:

- The care is provided for no more than two and a half hours a day.
- The parents are on the premises.
- There are no more than 25 children in any 1 group in any 1 room.

Persons providing drop-in or short-term care must:

- Register with the Department of Health and Human Services (Department); and
- Display a notice that the drop-in child care is not regulated by the Department.

The Director of the Division of Child Development (Division) must:

- Report to the General Assembly no later than May 1, 2006, on the number of drop-in and short-term care facilities that have registered with the Department; and
- Study, in coordination with other child care stakeholder organizations and advocates, current policies, practices, and laws related to drop-in and short-term care. The Division must report its findings and recommendations to the General Assembly by April 30, 2006.

These sections became effective September 22, 2005.

Section 4 of this act prohibits babysitting services offered by sex offenders or in the home of a sex offender. For additional information on this section, see **Criminal Law and Procedure.** (WGR)

Clarify/Enhance Domestic Violence and Tenancy Laws

S.L. 2005-423, Secs. 1-8 (SB 1029, Secs. 1-8) make several changes to the domestic violence statutes and create new laws regarding domestic violence victims and tenancy.

The act makes the following changes to the domestic violence statutes:

- Extends the time period a protective order can be renewed from a period of up to one year to a period of up to two years.
- If a defendant is ordered to stay away from a child's school, requires a copy of a protective order to be delivered to the principal, assistant principal, or the principal's designee.
- Allows the defendant in a domestic violence situation to have a seized firearm returned upon the final disposition of pending criminal charges, in addition to upon termination of the protective order.
- Clarifies when the court may waive the mandatory mediation of custody and visitation matters to apply in situations where there has been domestic violence between the parents, regardless of whether they were married.

The act creates three new statutes regarding domestic violence victims and tenancy. G.S. 42-42.1 prohibits landlords from discriminating against victims of domestic violence in residential rental situations. G.S. 42-42.2 allows tenants who are victims of domestic violence to have the locks on their rental property changed at their expense. G.S. 42-45.1 permits a victim of domestic violence to terminate a residential lease on 30 days notice without being liable for any additional rent, under certain circumstances.

The act amends the law governing the management of housing projects and programs to require housing authorities to give preferences in rentals to persons whose incomes are less than 30% of the area's median income.

The provisions allowing a protective order to be renewed for two years, and requiring a copy of an order to be delivered to a school became effective October 1, 2005, and apply to orders entered on or after that date. The provisions relating to tenancy of domestic violence victims became effective October 1, 2005, and apply to leases entered into or renewed on or after that date. The remainder of this act became effective October 1, 2005.

Sections 9-11 of this act clarify counterclaims in small claims actions and make other changes to landlord tenant law. For additional information on these sections, see **Civil Law and Procedure**. (SS)

Studies

Study to Identify Adoption Incentives for Children Who Are Difficult to Place

S.L. 2005-276, Sec. 10.49 (SB 622, Sec. 10.49) directs the Department of Health and Human Services to conduct a study to identify potential incentives for adoption of children who are difficult to place, including incentives already in place in individual counties and their associated costs, and funding sources available to support incentives. The Department was required to report the results of the study to the Senate Appropriations Committee on Health and

Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than October 1, 2005.

This section became effective July 1, 2005. (WGR)

Smart Start Funding Study

S.L. 2005-276, Sec. 10.65 (SB 622, Sec. 10.65) directs the North Carolina Partnership for Children, Inc. to study the following funding issues:

- Its allocation of funds to local partnerships.
- Funding equity among all counties and local partnerships.
- Strategies to alleviate inequity of funds to local partnerships.

The North Carolina Partnership for Children, Inc. must report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2006.

This section became effective July 1, 2005. (BP)

Office of School Readiness

S.L. 2005-276, Sec. 10.68 (SB 622, Sec. 10.68) directs the Department of Health and Human Services, the Department of Public Instruction, and the Office of the Governor to establish a study group to (1) develop a plan to create an Office of School Readiness, (2) consider other states' organizational structures for prekindergarten regulation, child care licensure, and other early childhood programs, (3) study the advantages and disadvantages of transferring the "More at Four" program to the Department of Public Instruction or the Department of Health and Human Services, (4) recommend a structure for the State's pre-kindergarten and other early-childhood programs, (5) develop a plan to implement this structure, and (6) report to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2006. Section 10.68(c) specifies that no transfer of any early childhood-related program can occur until the General Assembly approves the plan.

This section became effective July 1, 2005. (RJ)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 4
Civil Law and Procedure

Brenda Carter (BC), Karen Cochrane-Brown (KCB), Bill Gilkeson (BG), Kory Goldsmith (KG), Trina Griffin (TG), Tim Hovis (TH), Robin Johnson (RJ), Hal Pell (HP), Wendy Graf Ray (WGR), Walker Reagan (WR), Steve Rose (SR), and Susan Sitze (SS)

Enacted Legislation

Allow Name Change Where Divorce Granted

S.L. 2005-38 (HB 508). See **Children and Families**.

Clerks May Order Mediation

S.L. 2005-67 (HB 1015). See **Courts, Justice, and Corrections**.

Involuntary Commitment Affidavit

S.L. 2005-135 (HB 1199). See **Health and Human Services**.

Civil Rules – Filing of Papers Clarified

S.L. 2005-138 (SB 465) amends the North Carolina Rules of Civil Procedure to eliminate the general rule that every document that must be served on parties to a lawsuit must also be filed with the court. Instead the act specifies which documents must be filed with the court, as follows:

- Pleadings.
- Motions and notices of hearing.
- Any other application to the court for an order that affects anyone's rights or commands anyone to do something or not do something.
- Notices of appearance.
- Any other paper required to be filed by rule or statute.
- Any other paper required to be filed by the court.
- All orders issued by the court.

The act provides that all other papers should not be filed except in certain narrow circumstances. It also deletes the requirement for filing of depositions. Language concerning proof of service has been moved to a more appropriate place in the rule and has been updated to reflect that service by fax is allowed. A certificate of service must be signed and must include the name, service address, and fax number, if applicable, of each person served.

This act became effective October 1, 2005. (WGR)

Multicounty Superior Court District/Motions

S.L. 2005-163 (HB 514) amends the Rules of Civil Procedure to allow a motion in a civil action filed with the superior court clerk of a county that is in a superior court district consisting of more than one county to be heard in any county in the superior court district. Motions could be heard in civil or criminal court.

This act became effective October 1, 2005. (KG)

Adjust Adoption Procedure

S.L. 2005-166 (HB 532). See **Children and Families**.

Mediation Amendments

S.L. 2005-167 (SB 806). See **Courts, Justice, and Corrections**.

Amend Postseparation Support Laws

S.L. 2005-177 (HB 923) amends the definition of "postseparation support" as used in Chapter 50 of the General Statutes (Divorce and Alimony) to add the following new reasons for terminating postseparation support: (1) dismissal of a claim for alimony, or (2) entry of a judgment of absolute divorce if no claim for alimony is pending at that time. The act also requires that there be a pending alimony claim as a condition for ordering postseparation support at the time of entry of a judgment for absolute divorce.

This act became effective October 1, 2005, and applies to all postseparation support orders issued on or after that date. (RJ)

Enforcement of Power of Attorney

S.L. 2005-178 (HB 510) creates a remedy for attorneys-in-fact when the power of attorney is unreasonably refused by a third party, and provides assurances for the third party who relies on the power of attorney in good faith. A person that acts in good-faith reliance based on a writing that purports to confer a power of attorney is protected to the full extent of powers granted, unless the person has actual knowledge the power of attorney is not valid. The person is not responsible for any breach of a fiduciary duty, including misappropriation of any money or other property paid or transferred as directed by the attorney-in-fact and pursuant to the power of attorney. A person who unreasonably refuses to accept a power of attorney can be subject to liability for reasonable attorneys' fees and costs incurred in any action or proceeding to enforce the power of attorney, an injunction requiring acceptance of the valid power of attorney, or any other remedy available under applicable law.

The act also provides protections for third parties who deal with attorneys-in-fact as follows:

- The third party is not required to honor the attorney-in-fact's authority or conduct business with the attorney-in-fact if the third party is not required to conduct business with the principal under the same circumstances.
- The third party is not required to (1) engage in any transaction with an attorney-in-fact if the attorney-in-fact has previously breached any agreement with the third party, whether in an individual or fiduciary capacity, (2) open any account for a principal at the request of an attorney-in-fact if the principal is not already a customer of the third party, (3) make a loan to the principal at the request of the attorney-in-fact.
- The third party has a seven day "safe harbor" to determine whether to accept the power of attorney.
- A third party that has reasonable cause to question the legitimacy of the power of attorney is not required to honor the power of attorney.
- The principal, attorney-in-fact, or a third party presented a power of attorney may initiate a special proceeding to request a determination of the validity of the power of attorney.
- A bank or other depository institution retains the rights to terminate any deposit account in accordance with applicable law.

This act became effective October 1, 2005 and applies to powers of attorney created before, on, or after that date. (WR)

Amend Family Law Arbitration Act

S.L. 2005-187 (HB 1319) amends the Family Law Arbitration Act to make it conform to recent changes in the Revised Uniform Arbitration Act.

The act creates a new section (G.S. 50-42.1) that governs the issues that may **not** be waived by either party or that may only be waived at specified times during the arbitration. Prior to the controversy, the parties are not permitted to do any of the following:

- Waive the types of matters that may be the subject of an agreement to arbitrate.
- Unreasonably restrict the right to notice of the initiation of an arbitration.
- Unreasonably restrict the right to a disclosure by the arbitrator of any material facts that could affect the arbitrator's impartiality.

The parties are prohibited from waiving the following regardless of when the waiver would occur:

- The ability of a party to request certain relief from a court.
- Judicial immunity for arbitrators.
- An arbitrator's authority to change an award under certain circumstances.
- The ability of a party to have an award confirmed, vacated, modified, corrected, and docketed.
- The ability of a party to appeal certain aspects of the arbitration.

The act specifies that notice for initiating an arbitration must be given as provided in the agreement, or in the absence of agreement, by certified or registered mail, return receipt requested, or by service under the Rules of Civil Procedure. Arbitration may continue pending a court's determination of whether an arbitration agreement exists, and a party does not waive the right to arbitrate by seeking preliminary relief from a court.

The act also requires a person serving as an arbitrator to disclose any known facts that a reasonable person would consider likely to affect the arbitrator's impartiality during a proceeding. Failure by the arbitrator to make these disclosures may be grounds to vacate an award. It also allows the parties to agree that fees and expenses of counsel will not be included in the award. A court may, for good cause shown, seal all or part of an arbitration award or court order relating to an arbitration.

This act became effective October 1, 2005, and applies to agreements made on or after that date. It also applies to agreements to arbitrate made before the effective date if all parties to the agreement or to the arbitration proceeding agree that the act applies. (KG)

North Carolina Uniform Trust Code

S.L. 2005-192 (SB 679). See **Property, Trusts, and Estates** and **Health and Human Services**.

Subordination Agreement/Registration Amendments

S.L. 2005-212 (SB 667). See **Property, Trusts, and Estates**.

Planned Community Act Amendment

S.L. 2005-214 (SB 666) provides statutory authorization for provisions that allow the prevailing party to collect attorneys' fees in actions to enforce the articles of incorporation, declaration, by-laws, or rules of a planned community that was created before January 1, 1999, if those fees are allowed in the instrument that created the planned community.

North Carolina courts have held that a prevailing party in a lawsuit may not collect attorneys' fees unless there is specific statutory authorization to do so. The North Carolina Planned Community Act includes a specific authorization for the collection of attorneys' fees if the instrument that created the planned community (the "declaration") also allows for the collection of attorneys' fees.

In general, Chapter 47F of the General Statutes (North Carolina Planned Community Act) does not apply to planned communities that were created before January 1, 1999. This means that even if the declaration of a pre-1999 planned community allowed for the prevailing party to collect attorneys' fees, there was no statutory authorization to support that. This act provides that authorization.

This act became effective July 20, 2005 and applies to actions commenced on or after that date. (SR)

Department of Insurance Hearing/Unauthorized Insurer Summary Cease and Desist Order

S.L. 2005-217 (SB 552). See **Insurance**.

Signature Confirmation Under Rule 4

S.L. 2005-221 (HB 1434) authorizes service of civil process of a summons and complaint on a person by mail when delivery is confirmed by signature confirmation with electronic proof of service obtained from the United States Postal Service. Expressly excluded is use of electronic mailing for service on a party. The act makes conforming changes concerning confirmation of delivery by signature confirmation for purposes of judgment by default and corresponding changes for how proof of service is to be demonstrated when service is by signature confirmation.

This act became effective October 1, 2005 and applies to actions filed on or after that date. (WR)

Parenting Coordinator Established

S.L. 2005-228 (HB 1221). See **Children and Families**.

North Carolina Lien Law Revised

S.L. 2005-229 (SB 887). See **Property, Trusts, and Estates**.

Limit Liability for Agritourism Activity

S.L. 2005-236 (HB 329) limits the liability of persons engaged in providing agritourism activities carried out on a farm or ranch. Agritourism activities allow members of the public to view or enjoy rural activities such as farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. The act provides that a person engaged in the business of providing an agritourism activity is not liable for the injury or death of a participant resulting from an inherent risk associated with the activity, conditioned on the proper posting of a required notice warning of the inherent risk of the activity. Inherent risks include dangers or conditions that are an integral part of the activity – including natural conditions of land, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment used in

farming and ranching operations. The term also includes the potential of participants to act in a negligent manner by failing to follow instructions or failing to exercise reasonable caution. The limitation of liability does not apply if the injury or death occurs because the agritourism professional commits an act or omission that constitutes negligence, or willful or wanton disregard for the safety of the participant, or the agritourism professional has actual knowledge (or reasonably should have known) of a dangerous condition on the land, facilities, or equipment used in the activity, fails to make the danger known to the participant, and that danger causes the injury or death of the participant.

This act becomes effective January 1, 2006, and applies to agritourism activities that occur on or after that date. (BC)

Torts by State Law Enforcement

S.L. 2005-243 (SB 1118). See **State Government**.

Revise Business Corporation Act

S.L. 2005-268 (SB 324). See **Commercial Law and Consumer Protection**.

Medical Reserve Corps and Community Emergency Response Team Volunteers Qualified Immunity

S.L. 2005-273 (HB 1297) adds persons engaged in the provision of emergency services without financial gain to those volunteers that are granted qualified immunity from civil liability. The act defines "emergency services" as the preparation for and the carrying out of functions to prevent, minimize, and repair injury and damage resulting from natural or man-made disasters and all other activities necessary or incidental to the preparation for and carrying out of these functions, including:

- Firefighting, police, and rescue services.
- Medical and health services.
- Engineering services.
- Land surveying services.
- Warning services and communications.
- Radiological, chemical and other special weapons defense services.
- Evacuation of persons from stricken areas.
- Emergency welfare services, including providing emergency shelter, emergency transportation, and emergency resource management services.
- Existing or properly assigned plant protection services.
- Temporary restoration of public utility services.
- Other functions related to civilian protection, including the administration of approved State and federal disaster recovery and assistance programs.

The act also defines "volunteer" as any person who provides goods or services without any financial gain.

This act became effective October 1, 2005 and applies to causes of action that arise on or after that date. (WR)

Child Custody/Guardianship Jurisdiction

S.L. 2005-320 (HB 801). See **Children and Families**.

Access to Public Trial Preparation Material

S.L. 2005-332 (SB 856) establishes an exception to the public records law for trial preparation material that is a public record. A custodian of a public record that is also trial preparation material may deny access to the public record, whether or not a lawsuit has been filed, either until the lawsuit is resolved, or when the applicable statute of limitations expires. Any person denied access to a public record that is alleged to be trial preparation material may ask the court for a ruling. If the party seeking access is a party to the lawsuit, an action to determine access must be brought in the pending action. Otherwise, a person can bring a separate action for a judicial determination.

The act also amends the public records law establishing the process for gaining access to public records when access is denied, to **require** the court to award attorneys' fees to the party who prevails in having the records disclosed unless the court finds the agency acted with substantial justification in denying access to the public record or there were circumstances that make the award of attorneys' fees unjust. The act also **requires** the court to assess reasonable attorneys' fees against the party who initiates an action in bad faith or frivolously.

This act became effective October 1, 2005. (WR)

Consider Tax Consequences/Equitable Distribution

S.L. 2005-353 (HB 1318) clarifies that when a court considers the tax consequences of an equitable distribution of marital property, it must consider both the federal and State tax consequences that would have been incurred if the marital property had been sold on the date of valuation. The court may, in its discretion, consider whether or when the tax consequences are reasonably likely to occur when determining the equitable value that is appropriate for this factor.

This act became effective October 1, 2005. (KG)

Child Support Reforms

S.L. 2005-389 (HB 1375) makes several changes to the child support enforcement laws.

Effective July 1, 2007, the act eliminates the authority of the clerk of court to monitor enforcement of payment under child support orders, further centralizing this function within the Department of Social Services. The clerk will still be required to maintain all official records and all case data concerning child support matters previously enforced by the clerk of court in the case. The clerk or a district court judge would also have the authority, upon affidavit of the obligee, to issue an order ordering an obligor to appear and show cause why the obligor should not be the subject of one of the available enforcement remedies.

The act also authorizes the State, through the Department of Social Services, to negotiate and reduce by 2/3 the amount of past-due public assistance debt owed by a responsible parent on the condition that the parent pay all child support payments, including arrearages, for a 24-month period of time. The reduction in debt is subject to court approval after an inquiry into the financial status of the obligor. The parent's public assistance debt must be at least $15,000 before the parent would be eligible to participate in the program. If the parent is late or defaults on any payment during the 24-month period, no portion of the public assistance debt would be reduced.

The act clarifies that G.S. 110-132 (Affidavit of parentage and agreement to support) is the substantive law that governs paternity determinations.

The act also makes two changes regarding the notice requirement related to liens on bank accounts:

- Requires the child support agency to notify any non-liable joint account holders, in addition to the responsible parent.

- Requires notice on the financial institution to be served in accordance with Rule 5 rather than Rule 4 of the North Carolina Rules of Civil Procedure. (Rule 5 does not require a summons from the clerk, service by the sheriff, or use of certified mail. Service is made by either hand-delivery or regular mail.)

Except as noted above, this act becomes effective December 12, 2005. (KG)

Real Property Electronic Recording Act/Notary Act

S.L. 2005-391 (SB 671). See **Property, Trusts, and Estates.**

Autopsy Photos Not Public Record

S.L. 2005-393 (HB 1543) provides that photographs and video and audio recordings of official autopsies are not public records. The text of an autopsy report, however, will continue to be a public record and fully accessible to the public. The act authorizes the custodian of the photographs or recordings to permit any member of the public to view them, but not to provide copies. The act allows certain public officials and others to obtain copies for official use or specialized use only. Under the act, any person may seek an order through a special proceeding to obtain copies of the photos or recordings. The act makes the unauthorized disclosure of these materials a Class 2 misdemeanor and stealing the materials a Class 1 misdemeanor.

Under prior law, autopsy reports, including photographs, video and audio recordings made in connection with the autopsy, are public records as defined in G.S. 132-1.

The act makes the following changes:

- Exempts photographs or video or audio recordings of official autopsies from the definition of a "public record."
- Makes clear that the text of an autopsy report is still a public record and fully accessible to the public.
- Amends G.S. 130A-389, Autopsies, to provide that copies of autopsy reports must be furnished to any person upon request, subject to the limitations on disclosure of photographs and recordings otherwise applicable under the act.
- Authorizes the custodian to permit any member of the public to view original photographs or recordings at reasonable times and under reasonable supervision but generally prohibits the furnishing of copies.
- Specifies that certain public officials may obtain copies of photos or recordings for official use but are prohibited from disclosing them to the public except for the purpose of identifying the deceased.
- Provides that after signing a statement acknowledging that they have received notice that unauthorized disclosure of autopsy recorded images is a crime, the following other persons may obtain copies of photos or recordings but will be prohibited from disclosing them to the public unless otherwise authorized by law:
  - Personal representative of the decedent's estate.
  - A person authorized by court order.
  - A physician licensed in the State, but the physician may obtain the copy only in order to confer with attorneys or others with a bona fide professional need to use or understand forensic science.
  - After redacting all identifying information, another medical examiner, coroner, or physician, or their designee, for medical or scientific purposes or for teaching or training purposes.
- Authorizes a person who is denied access to copies of photos or recordings to commence a special proceeding under Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose the photos or recordings. The act includes specific

criteria for the court to consider in determining good cause. A person aggrieved by the decision of the clerk may appeal to the superior court for a de novo review.

- Requires that a petitioner in such a special proceeding must give notice to the decedent's personal representative, if any, and to the decedent's next-of-kin.
- Provides that the restrictions on disclosure do not apply to the use of autopsy photographs or video or audio recordings in criminal, civil, or administrative proceedings. This provision allows autopsy photographs or video or audio recordings to be used as evidence in a criminal or civil trial, or an administrative proceeding. Once these documents become part of a court record they become public records. However, in a specific case, the court or presiding officer may restrict the use of the recorded images.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (BG)

Expedite Juvenile Proceedings/Guardian Ad Litem

S.L. 2005-398 (HB 1150). See **Children and Families**.

Property Exempt from Enforcement Actions

S.L. 2005-401 (HB 1176) increases the monetary limit on the value of property a judgment debtor may exclude from creditor claims and also adds a new exemption. The increased limits are as follows:

Exemption	Prior Law	New Law
Real or personal property used as a residence, or in a burial plot	$10,000	$18,500. If debtor is 65 and older then $37,000 (if previously owned as entireties or joint tenants with right of survivorship and the former co-owner is deceased)
"Wildcard" or unused exemption	$3,500	$5,000
One motor vehicle	$1,500	$3,500
Household furnishings and goods	$3,500 for debtor $750 for each dependent (total $3,000 dependents)	$5,000 for debtor $1,000 for each dependent (total $4,000 dependents)
Tools of the trade	$750	$2,000
Wedding and engagement rings	Could be included as a household good	$4,000
Compensation for personal injury	100%	Includes compensation from private disability policies or annuities
Individual retirement plans	100%	Adds Roth IRAs, individual retirement annuities and certain accounts established as part of a trust

College savings plans	No exemption	$25,000 except funds placed in the account during the last 12 months, unless made in the ordinary course of the debtor's investments and that will actually be used for the college education of the debtor's child
Retirement benefits from other states	No exemption (State retirement plan benefits exempt under other law)	100%
Alimony, support, separate maintenance, and child support	No exemption	100% to the extent reasonably necessary for the support of the debtor or debtor's dependent

This act becomes effective January 1, 2006 and apples to judgments and bankruptcy petitions filed on or after that date. (KG)

Class Actions and Unpaid Residuals

S.L. 2005-420 (SB 911) requires the court in class action lawsuits, prior to the entry of judgment or order approving settlement, to determine the total amount payable to all class members if all class members are paid the amount they are entitled to under the judgment or settlement. The court is also required to set a date for the parties to the lawsuit to report back to the court the total amount actually paid to class members. After receiving this report, the court must direct that the unpaid residue be paid equally to the Indigent Person's Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents.

This act became effective October 1, 2005, and applies to causes of action that arise on or after that date. (WR)

Homeowner Association Amendments

S.L. 2005-422 (HB 1541). See **Property, Trusts, and Estates**.

Clarify/Enhance Domestic Violence and Tenancy Laws

S.L. 2005-423, Secs. 9-11 (SB 1029, Secs. 9-11) clarify that counterclaims need not be filed in small claims actions in order to preserve the right to later pursue such a claim.

The act also amends landlord-tenant law to:

- Provide judgment for the plaintiff if the defendant fails to appear in court, the plaintiff requests judgment in open court, the pleadings allege failure to pay rent, and the defendant has not filed a responsive pleading.
- Clarify the evidence a magistrate must consider in determining the amount of rent in arrears pursuant to a judgment for possession.

These sections became effective October 1, 2005.

Sections 1-8 of this act make changes to domestic violence law and tenancy laws for domestic violence victims. For additional information on these sections, see **Children and Families**. (SS)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 5
Commercial Law and Consumer Protection

Karen Cochrane-Brown (KCB), Wendy Graf Ray (WGR), Tim Hovis (TH),
Walker Reagan (WR), and Steve Rose (SR)

Enacted Legislation

North Carolina State University Dairy Sales

S.L. 2005-20 (HB 752). See **Education**.

Western Piedmont Community College/Umstead Act

S.L. 2005-63 (SB 510). See **Education**.

Motor Vehicle Dealer Technical Corrections

S.L. 2005-99 (HB 786) makes technical changes to the Motor Vehicle Dealers and Manufacturers Licensing Law.

Expiration of License. – Any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler must obtain a license to engage in business in North Carolina. Until January 1, 2006, licenses expire on June 30th of the year after the license is issued. This act provides that, after January 1, 2006, licenses will be issued for a period of one year, but the Division of Motor Vehicles will stagger the expiration dates in the same way it staggers expiration dates for dealer license plates.

Licensee Information Displayed. – A motor vehicle dealer is required to keep a list of licensed salesmen in a conspicuous place at the dealer's business. The list must include the names, addresses, and license serial numbers of the salesmen. In addition, when a licensee advertises, the type and serial number of his or her license must appear in the ad. This act provides that only the licensee's name must be posted in a business or appear in an advertisement, without additional identifying information.

License Fee When Changing Employers. – A sales representative, factory representative, or distributor representative license must include the name of the representative's employer. When the representative changes employers, he or she must apply for a new license with the correct employer name. This act would have increased the fee for the new license from half of the annual licensing fee to an amount equal to the licensing fee. However, S.L. 2005-276, Sec. 44.1 (SB 622, Sec. 44.1) amended this provision to make the fee $10, effective October 1, 2005.

This act becomes effective January 1, 2006. (WGR)

Disclose Monetary Transmissions

S.L. 2005-104 (HB 1320) amends the Money Transmitter Act to require that licensees subject to the Act provide receipts to their customers containing certain disclosures if the transmission is to a location outside the United States. The licensee must provide a receipt showing the amount of funds submitted for transmission and any fees charged by the licensee, as well as a toll-free number that the customer can use to receive information about the money

transmission. If the licensee fixes the rate of currency exchange at the initiation of the transaction, the receipt must also state:

- The rate of exchange.
- The amount to be paid in the foreign currency.
- The period in which the payment must be made in order to qualify for the fixed rate of exchange.

If the rate of exchange is not fixed at the time of the transmission, the receipt must disclose that the rate will be set when the recipient receives the funds in the foreign country.

Finally, if the customer requests, the licensee must provide the disclosures required by this act before completing the transaction.

This act became effective October 1, 2005, and applies to transactions occurring on or after that date. (KCB)

Satisfaction of Mortgages and Deeds of Trust

S.L. 2005-123 (SB 734) enacts the Uniform Residential Mortgage Satisfaction Act and changes the law in the following ways:

- Adopts a uniform time of 30 days within which a lender must record evidence of the satisfaction of an obligation after the obligation is paid off.
- Adopts a uniform method of giving notice requesting a loan payoff amount and clarifies the right of the party receiving the payoff amount to rely on that payoff amount in order to get the property released as collateral for the loan.
- Adopts a uniform method of notifying the lender when the lender does not timely file satisfaction of the loan. It also provides for uniform incentives for satisfactions to be recorded in a timely manner.
- Provides for several different uniform ways satisfaction of a loan can be recorded, including a satisfaction of security agreement, an affidavit of satisfaction signed by an authorized satisfaction agent, a trustee's satisfaction of deed of trust, and satisfaction of record by the presentation of the original note and deed of trust marked paid and satisfied in full.
- Limits the satisfaction agent to a licensed attorney.
- Eliminates the necessity for the register of deeds to make marginal notations on the original record of a document as originally recorded upon satisfaction of the document.
- Eliminates the necessity for the register of deeds to verify and certify the notary acknowledgements of the signatures of the parties to the documents.
- Eliminates the necessity for the register of deeds to verify the recording information of the original documents when indexing a satisfaction document, allowing the register of deeds to rely solely on the information contained on the satisfaction document.
- Eliminates the requirement that deeds of trust be indexed by trustee. Only indexing by grantor and beneficiary is required.

This act became effective October 1, 2005. (WR)

Electric Service Conflicts

S.L. 2005-150, Sec. 1 (SB 512, Sec. 1) amends Chapter 75 of the General Statutes to make it an unfair method of competition and an unfair act or practice for a city that owns and operates an electric system to condition the provision of water or sewer services on an agreement to purchase electric services from the city. A violation of Chapter 75 can result in civil penalties and treble damages.

This section became effective July 5, 2005.

Sections 2 through 9 of this act are intended to help resolve certain conflicts regarding electric service (1) caused by municipal annexation of territory, and (2) certain territorial disputes. For additional information on these sections, see **Utilities.** (SR)

Prohibit Deceptive Marketing/Banking Services

S.L. 2005-162 (HB 1168) prohibits any person from using the name or logo of any banking entity in connection with the sale, offering for sale, or advertising of any financial product or service without the express written consent of the banking entity. A violation of this provision is a Class 3 misdemeanor punishable by a fine of up to $500. Any banking entity may file an action to enjoin the use of its name or logo in the sale, offering for sale, distribution, or advertisement of any financial product or service without its express written consent. The court may grant injunctions to restrain the use of the name or logo and may require defendants to pay to the banking entity all profits that resulted from the unauthorized use of the name or logo. The court may also require the defendants to pay damages for the unauthorized use. These remedies are not exclusive and do not preclude any other remedies provided for by law.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (KCB)

Hold Harmless/Motor Carrier Contracts

S.L. 2005-185 (HB 1163) provides that "hold harmless" provisions in motor transportation agreements that require the motor carrier to hold the shipper harmless for acts of the shipper are against public policy and void. The act does not affect provisions where the motor carrier holds the shipper harmless for the acts of the motor carrier, nor does it affect certain intermodal transportation contracts. A motor carrier transportation contract is a contract for the transportation of property for compensation and the entrance onto property for the purpose of loading, unloading, or transporting property for hire. It also includes services connected with the transportation, including storage.

This act became effective October 1, 2005, and applies to contracts entered into on or after that date. (TH)

Exempt Radio Emergency Associated Communications Teams (REACT)/Charitable Solicitations

S.L. 2005-230 (SB 421) exempts Radio Emergency Associated Communications Teams (REACT) from having to register with the Secretary of State in order to solicit donations or have a third party solicit donations on their behalf.

Chapter 131F of the General Statutes governs the solicitation of contributions by or on behalf of charitable organizations in North Carolina. Charitable organizations and their agents who intend to solicit funds or to have funds solicited on their behalf in the State must follow all of the requirements set forth in Chapter 131F including obtaining a license from the Secretary of State and filing certain information regarding the solicitation campaign with the Secretary of State. A number of organizations are exempted from these requirements and this act adds REACT to that list.

This act became effective October 1, 2005. (SR)

Better Insurance/Annuity Disclosure

S.L. 2005-234 (HB 655). See **Insurance**.

Limit Liability for Agritourism Activities

S.L. 2005-236 (HB 329). See **Civil Law and Procedure**.

Revise Business Corporation Act

S.L. 2005-268 (SB 324) makes various amendments to the Business Corporation Act. The changes are generally limited to the use of extrinsic facts in articles of merger and share exchanges, shareholder and director voting, directors and officers' matters, processes for fundamental changes to corporations, and inspection rights and shareholder reports. The act also makes conforming changes to the Nonprofit Corporation Act, the Limited Liability Company Act, and the Partnership and Limited Partnership acts.

The act modifies the provisions of the law for amending articles of incorporation including permitting amendments by action of the board of directors without a vote of shareholders to effect stock splits and to increase shares for dividend purposes. The act also clarifies that proposed amendments that must be approved by shareholders first have to be approved by the board of directors.

The act amends the law governing mergers of corporations to simplify mergers where the parent company owns 90% or more of the stock in the subsidiary and also eliminates the requirement that plans of merger be incorporated into articles of merger. The act allows plans of merger to be amended as provided in the plan of merger after the plan of merger is approved but before the merger becomes effective. If, as a result of merger, shareholders will have personal liability for existing or future obligations of the surviving corporation, the shareholders must consent to the merger. Corresponding changes are made by the act to the nonprofit corporation law and the limited liability company law.

The act permits a shareholder or director who has consented to action without a meeting to withdraw his or her consent provided the withdrawal is done prior to the consent becoming effective. It also removes restrictions on the minimum size of boards of directors with staggered terms, gives greater flexibility to shareholders to vary the size of the board, and authorizes the board to designate an officer authorized to appoint and dismiss other officers.

The act gives members of the board of directors rights to inspect the corporation's records and allows inspecting shareholders to view records electronically. The act eliminates the requirements that the corporation give notices to a shareholder if notices of annual meetings and dividends for the past two years to that shareholder have been returned undeliverable.

This act became effective October 1, 2005. (WR)

Intestate Trust Services on a Reciprocal Basis

S.L. 2005-269 (SB 519) amends the Interstate Trust Act to permit out-of-state and foreign trust companies to operate in the State on a reciprocal basis through the use of a registered office and no longer requires that these trust companies have a physical office in the State at which trust business done in the State is conducted. The act requires that all other requirements of the Interstate Trust Act apply to these trust companies including the right of the Commissioner of Banks (Commissioner) to regulate all activities conducted by the trust companies through registered offices. Out-of-state and foreign trust companies would still have to register with the Commissioner to do business in the State as was required prior to this act.

The act authorizes the Commissioner of Banks to waive the requirement that the trust company furnish the Commissioner with a copy of the board of directors' resolution authorizing the trust company's operations in the State.

The act also adds a new section to Article 13 of Chapter 53 of the General Statutes, Conservation of Bank Assets and Issuance of Preferred Stock. This new section clarifies the law governing the issuance of preferred stock by North Carolina banks to make it clear that the

reference in Article 13 to the issuance of preferred stock relates only to cases in which a bank has been placed in conservatorship under that Article. In other circumstances, a bank can issue preferred stock or other shares authorized by Chapter 55 of the General Statutes, The Business Corporation Act, with the approval of the Commissioner of Banks.

This act became effective August 12, 2005. (WR)

Accounts Transfers and Agency Appointments

S.L. 2005-274 (SB 517) amends the Trust Company and Interstate Trust Business Act by adding a new part to govern the transfer of trust accounts among affiliate trust companies and to authorize a trust institution to appoint another trust institution to act as the original trust institution's agent for trust administration purposes.

The act permits trust companies to transfer trust accounts to affiliate trust institutions unless the provisions creating and governing the trust account specifically prohibit such a transfer. Such transfers must be made in writing after notice is given to all clients or persons entitled to notice of trust account activity between 90 and 30 days prior to the transfer taking place. If any person entitled to notice of the transfer objects to the transfer prior to the effective date of the transfer, the transfer will not be made. The transfer does not affect the liability of the transferring trust institution to the trust beneficiaries. The trust institution accepting the transfer of the account also agrees to assume all responsibilities for the trust account and to be governed by the provisions establishing and governing the account applicable immediately prior to the transfer. The act authorizes a trust institution to appoint another affiliate trust institution to act as its agent for the performance of any acts it is required or authorized to make.

This act became effective October 1, 2005. (WR)

All-Terrain Vehicle Regulation

S.L. 2005-282 (SB 189). See **Children and Families**.

Motor Vehicle Repairs/Clarify Cost of Repair

S.L. 2005-304 (HB 1299) clarifies what costs are to be included by a motor vehicle repair shop when determining whether a written estimate of repair costs is required by law. The North Carolina Motor Vehicle Repair Act requires a motor vehicle repair shop to prepare a written repair estimate before effecting any diagnostic work or repair if the cost of the work will exceed $350. This act provides that, in determining whether the cost of repair work exceeds $350, the cost of repair work includes the cost of parts and labor necessary for the repair work and any charges for necessary diagnostic work and teardown, and also includes taxes, any other repair shop supplies or overhead, and any other services incidental to the repair work.

This act became effective October 1, 2005, and applies to repair estimates that are made on or after that date. (WGR)

Revise Mortgage Lending Act

S.L. 2005-316 (HB 237) amends the Mortgage Lending Act to authorize the licensure of limited loan officers that are employed by affiliated mortgage bankers. An "affiliated mortgage banker" is defined as a licensed mortgage banker that meets one of two sets of criteria. The first set of criteria relate to (1) licensure or supervision by other jurisdictions or under a compact or agreement authorized by the Commissioner of Banks (Commissioner), (2) the number of licensed employees, and (3) the licensee's net worth. The second set of criteria relate to (1) whether the licensee is a subsidiary of a company regulated by the Federal Reserve Board or the Office of Thrift Supervision, and (2) the licensee's net worth. A limited loan officer must be at least 18 and

must work exclusively for an affiliated mortgage banker. The affiliated mortgage banker must certify that the limited loan officer is qualified and agree to be liable for any claims and damages, including punitive damages, arising from the limited loan officer's lending activities. The limited loan officer may act provisionally during the pendency of an application for up to 60 days if the employer makes a written undertaking to be responsible for the applicant's activities.

The act also authorizes the Commissioner to allow certain loan officer applicants to act as a loan officer during the pendency of their application. In order to qualify for this treatment, the applicant must (1) have had no negative action taken on an application or license in the preceding five years, (2) be employed by a licensed mortgage broker or lender that certifies that the applicant is qualified and that undertakes to be responsible for the acts of the applicant, and (3) currently be or have been employed as a loan officer within the previous six months by an exempt depository institution.

Finally, the act adds a new item to the list of actions that the Commissioner may use as the basis for disciplining a licensee or applicant. The Commissioner may take action against a licensee or applicant who has falsely certified attendance or completion of hours at a continuing education course.

This act became effective August 25, 2005. (KCB)

Update Consumer Credit Sales Cap

S.L. 2005-338 (HB 1411) increases the cap for the amount financed in a consumer credit sale from $25,000 to $75,000 under the Retail Installment Sales Act. The Retail Installment Sales Act places certain conditions on consumer credit sales, but does not apply to direct loan transactions in which the lender is not engaged in the sale of goods or the furnishing of services. This increase was enacted to reflect the increase in the costs of consumer goods resulting from inflation.

This act became effective October 1, 2005, and applies to sales that occur on or after that date. (TH)

Investments of State and Local Funds

S.L. 2005-394 (HB 1169). See **State Government**.

University of North Carolina/Amend Umstead Act

S.L. 2005-397 (HB 1539). See **Education**.

Property Exempt from Enforcement Actions

S.L. 2005-401 (HB 1176). See **Civil Law and Procedure**.

Consumer Credit Counseling/Debt Management

S.L. 2005-408 (SB 590) amends the criminal law that prohibits persons from engaging in the business or practice of debt adjusting by creating an exemption from the limitations of the law for attorneys who are not employed by a debt adjuster and for organizations that provide credit counseling and debt management services under the following conditions:

- Provides free credit counseling and budgeting assistance to a debtor prior to enrollment in a debt management plan.
- Determines that the debtor has the financial ability to complete a debt management plan suitable to the debtor.

- Disburses debtor's funds to creditors pursuant to a debt management plan for which the debtor only pays nominal consideration not to exceed $40 to initiate the plan and a monthly fee of 10% of the monthly payments not to exceed $40.
- Provides at least a quarterly accounting to the debtor of disbursements made.
- Does not require the debtor to purchase other services or materials as a condition of participation.
- Does not receive a payment, commission, or other benefit for referring the debtor to a provider of services.
- Is accredited by an organization approved by the Commissioner of Banks.

The act also expands the definition of "debt adjusting" to include the business or practice of debt settlement or foreclosure assistance by acting as an intermediary between the debtor and the debtor's creditors for the purposes of reducing, settling, or altering terms of payment of debts regardless of whether the person is compensated in advance or actually distributes debtor's funds to creditors.

Finally, the act provides that the Attorney General, in addition to district attorneys, can bring actions to enjoin illegal debt adjusting as an unfair or deceptive trade practice and allows the court to order the defendant to pay a civil penalty of up to $5,000 and attorneys' fees.

G.S. 14-426(7)g, as amended by this act, relating to approval of accredited organizations by the Commissioner of Banks, became effective October 1, 2005. G.S. 14-423(a)(2), as amended by this act, which expands the definition of "debt adjusting" becomes effective December 31, 2005. The remainder of this act became effective September 20, 2005. This act expires October 1, 2007. (KCB)

Clarify Motor Vehicle Dealer Franchise Laws

S.L. 2005-409 (HB 1527) makes changes to the Motor Vehicle Dealers and Manufacturers Licensing Law, which provides for regulation and licensing of motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in North Carolina. The act makes changes to the law as follows:

Dealer Franchise Agreements. – The act rewrites the provision of the law that requires the prefiling of dealer franchise agreements and modifications to those agreements with the Commissioner of Motor Vehicles (Commissioner). The act requires that prior written notice of modifications be given to each affected dealer, the Commissioner, and the North Carolina Automobile Dealers Association, by registered or certified mail at least 60 days before the effective date of the modification. The act also provides that a franchised motor vehicle dealer may file a protest of the modification with the Commissioner and have a hearing.

Exception for Certain Incentive Programs. – North Carolina law prohibits manufacturers, factory branches, distributors, distributor branches, or their representatives, from varying the price charged to their franchised dealers for new motor vehicles based on the dealer's purchase of facilities, equipment, or merchandise from the manufacturer, the dealer's remodeling or construction of a facility, or the dealer's participation in manufacturer-sponsored training programs. It also prohibits the varying of vehicle price based on the dealer's sales volume, level of sales and customer satisfaction, the dealer's purchase of advertising materials, communication devices or furnishings, or the dealer's participation in manufacturer-sponsored used motor vehicle inspection or certification programs. Prior to the enactment of this act, manufacturers with programs that vary the price of vehicles in violation of this provision that were in compliance when they were established, were authorized to continue to operate the programs until June 30, 2006. This act extends that exception to June 30, 2010.

Captive Finance Sources. – The act prohibits manufacturers, factory branches, distributors, distributor branches, or their representatives, from requiring their franchised dealers to agree to certain conditions in order for the dealer to floor plan inventory, provide financing for the dealer's customers, finance construction or renovation of the dealer's facilities, or obtain benefits offered by a "captive finance source" (one that provides car loans and is owned,

operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch). In addition, the Commissioner is authorized to enforce the provisions through injunctive relief and other measures to protect parties' rights pending the outcome of hearings. The act also provides civil remedies for any party to bring an action for damages or equitable relief in a court of competent jurisdiction.

Security of Dealership Information. – The act places limitations on any manufacturer, factory branch, distributor, or distributor branch, with regard to a dealer's management computer system. The act prohibits any requirement for a dealer to use a particular management computer system that does not enable the dealer to maintain the security, integrity, and confidentiality of data. The act also places requirements on a manufacturer to disclose to a dealer any breach of unencrypted confidential dealership or customer data, requires the dealer to consent to disclosure of information, and requires the provision of a list of all third parties to whom dealer management computer system data has been disclosed. A person who violates these provisions is exempt from the criminal penalty set out for violation of other parts of the Motor Vehicle Dealers and Manufacturers Licensing Law.

Applicability of Law. – The act clarifies that the Motor Vehicle Dealers and Manufacturers Licensing Law applies to all agreements between manufacturers, wholesalers, or distributors and motor vehicle dealers.

Definition of New Motor Vehicle. – Prior to enactment of this act, a "new motor vehicle" was defined as a vehicle that had never been the subject of a sale other than between new motor vehicle dealers or between a manufacturer and dealer of the same franchise. This act amends the definition to specify that it includes vehicles that have never been the subject of a completed, successful, or conditional sale that was subsequently approved.

The part of this act concerning captive finance sources becomes effective January 1, 2006. The remainder of this act became effective September 20, 2005. (WGR)

Identity Theft Protection Act of 2005

S.L. 2005-414 (SB 1048) provides for the protection of personal and credit information that might lead to identity theft by requiring businesses to protect individual social security numbers, permitting a person to freeze access to the person's credit report, requiring certain safeguards related to the destruction of personal information records, providing protections from security breaches of personal information databases, and by requiring State and local agencies to protect social security numbers and other personal identifying information.

The act enacts six new statutory sections to provide for numerous protections of personal and credit information. Violations of these sections would be considered an unfair or deceptive trade practice under Chapter 75 of the General Statutes.

Social Security Number Protection. – The act prohibits a business from communicating social security numbers to the general public. It prohibits a social security number from being printed on identification cards or used by the business in mailings to customers, requiring that a social security number be transmitted over the Internet or be required to access an Internet website, or to otherwise sell or disclose a social security number to a third party without the written consent of the person to whom the number belongs, except for legitimate business purposes. Not included under these protections are social security numbers obtained from the public records.

Security Freeze. – The act gives a person the right to freeze access to his or her credit reports, except when specifically authorized by the person. Once a security freeze is in place the credit reporting agency is prohibited from releasing all or part of the credit report without the express authorization of the person. A credit reporting agency may charge a fee of up to $10 for the establishment, removal, or temporary lifting of a security freeze, except that a person must not be charged a fee if the person is a victim of identity theft as evidenced by an incident report filed with a law enforcement agency.

Destruction of Personal Information Records. – The act requires that businesses that maintain or possess personal information of North Carolina residents protect this information from unauthorized access or use after the information is disposed of. The act requires that records containing personal information be properly destroyed and requires that third parties hired to destroy personal information be bound by the same requirements.

Protection from Security Breaches. – The act requires any business that possesses personal information of North Carolina residents that has a security breach of its personal information database to notify persons whose personal information is released or compromised.

The act also expands the venue in which criminal charges for identity theft can be brought to include a county where the victim resides, where the perpetrator resides, or in any other county instrumental to the completion of the offense.

The act adds a new section to the law to permit a person who reasonably suspects that he or she is the victim of identity fraud to file an incident report with law enforcement that has jurisdiction over the person's residence, regardless of where the crime may have been committed or will be required to be prosecuted.

The act amends the public records law to provide for protection of social security numbers filed, recorded, or maintained by a State or local governmental agency. The act prohibits the collection of social security numbers except in certain situations, requires that social security numbers be segregated from other public record information, and prohibits the release of social security numbers to the general public. This section permits the use and sharing of the social security number for governmental and court purposes and does not apply to recorded documents and court records containing social security numbers.

The act prohibits specified identifying information from being included on documents filed for recording in the register of deeds office and voids any loan closing instruction that requires that a social security number be included on a document to be recorded. This section also permits a person to ask the register of deeds to redact specified identifying information from any publicly available Internet website used by the register of deeds.

The act requires State agencies to report annually to the General Assembly on steps taken to protect personal information. It amends the definition of identifying information for identity theft purposes to include State identification cards, passport numbers, taxpayer identification numbers, email names and addresses, and Internet account numbers and identification numbers. It also clarifies that a person who is a victim of identity theft can get his or her criminal record expunged even if the stolen identity was not used to commit a crime.

The act provides for the recovery of a minimum of $500 for civil damages to a person who is injured by identity theft.

Most of the provisions of this act become effective December 1, 2005. The prohibitions on businesses including social security numbers on cards required for services, requiring unencrypted social security numbers be transmitted over the Internet, requiring social security numbers to access the Internet without requiring an accompanying password, and printing a social security number on materials mailed to the individual became effective October 1, 2006. The same prohibitions on the use of social security numbers by State and local agencies become effective July 1, 2007. (WR)

Methamphetamine Lab Prevention Act

S.L. 2005-434 (HB 248). See **Criminal Law and Procedure**.

New Motor Vehicle Warranties

S.L. 2005-436 (HB 1295) amends the New Motor Vehicles Warranties Act, Article 15A of Chapter 20 of the General Statutes. The act provides remedies for purchasers of new vehicles that violate express warranties. This is more commonly known as the "Lemon Law." The new law

changes the definition of "motor vehicle" from a motor vehicle "with a gross vehicle weight of 10,000 pounds or more" to a motor vehicle "that weighs more than 10,000 pounds." The Act also amends the definition of a "reasonable allowance for use" when calculating refunds provided to a consumer as "the number of miles [the vehicle] is used by a consumer up to the third attempt to repair the same nonconformity…or the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first." The consumer's refund is reduced by the number of miles the consumer uses the vehicle multiplied by the purchase or lease price and divided by 120,000.

This act became effective October 1, 2005, and applies to contracts entered into on or after that date. (TH)

Manufactured Homes Escrow Accounts

S.L. 2005-451 (HB 630) amends the law regulating the sale of manufactured homes to consumers by manufactured home dealers by requiring all presale deposits to be held in escrow pending the finalization of the sale. The act requires dealers to establish escrow or trust accounts with a federally insured financial institution and to deposit all buyer funds in the account within three business days of receipt. Buyer's funds must be retained in the escrow or trust account until all the terms of the sales contract have been finalized, but in no event less than the three-day right of rescission period, or until the buyer cancels the contract. Upon cancellation of the contract, buyer's funds are to be refunded within seven days.

The act makes the violation of the escrow requirements grounds for the suspension or revocation of a manufactured home dealer's license and subjects the dealer to fines.

The act also increases the membership of the North Carolina Manufactured Homing Board from 9 to 11 by adding a person employed with a United States Department of Housing and Development-approved housing counseling agency appointed by the Speaker of the House and an accountant appointed by the President Pro Tempore of the Senate.

Sections of this act changing the membership of the North Carolina Manufactured Housing Board and definitions become effective April 1, 2006. The remainder of the act, including the escrow requirements, becomes effective July 1, 2006. (WR)

Motor Vehicle Repair and Franchise Changes

S.L. 2005-463 (HB 1227) clarifies the definition of "motor vehicle repair" under the Motor Vehicle Repair Act and amends the motor vehicle franchise law as it relates to relocation of a dealer.

North Carolina's Motor Vehicle Repair Act regulates motor vehicle repair shops in North Carolina. Repair shops are required to provide written estimates to customers before performing motor vehicle repairs that will exceed $350. The law defines "motor vehicle repair" as all maintenance, modification, and repair to motor vehicles and the diagnostic work incident to those repairs. The definition specifically includes, but is not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by repair shops. This act clarifies that shop supply fees and hazardous material disposal fees incident to a repair are also included in the definition of "motor vehicle repair."

The North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law makes it unlawful for a manufacturer, factory branch, distributor, or distributor branch, to enter into a franchise establishing or relocating a dealer into a relevant market area where the same line make is represented without first notifying the Commissioner of Motor Vehicles and each dealer in that line make in the relevant market area. Dealers have an opportunity to protest the proposed addition or relocation, and if a protest is filed, the manufacturer may not establish or relocate the dealer until there has been a hearing to determine if there is good cause for

permitting the addition or relocation. However, the notification and protest procedures do not apply in the following situations:

- The relocation of an existing dealer within that dealer's relevant market area to a site that is not within 10 miles of a licensed dealer for the same line make of motor vehicle.
- A proposed additional dealer to be established at or within two miles of a location where a former licensed dealer for the same line make has ceased operating within the previous two years.
- The relocation of an existing dealer within two miles of its current site if the line make has been operating from that site for a minimum of three years immediately preceding the relocation.
- The relocation of an existing dealer if the proposed site for relocation is farther away from all other dealers of the same line make in that relevant market area than the current location.

This act adds a new exemption for the relocation of an existing dealer within 4.5 miles of its current site if the line make has been operating from that site for a minimum of 50 years immediately preceding the effective date of the act and the proposed site for relocation is not within 4 miles of another dealer for the same line make.

This act became effective October 3, 2005. (WGR)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 6
Constitution and Elections

Erika Churchill (EC) and Bill Gilkeson (BG)

Note: For legislation affecting voting, the legislation cannot be implemented until it has received approval from the United States Department of Justice under Section 5 of the Voting Rights Act of 1965. Approval is most commonly obtained administratively from the United States Attorney General. This requirement applies to legislation affecting any of the 40 North Carolina counties covered by Section 5, including all statewide legislation. Unless otherwise indicated, the effective date stated is the effective date as it is in the legislation. It may be that Section 5 Voting Rights Act approval has not yet been obtained, and therefore the act cannot be implemented until such approval is forthcoming.

Enacted Legislation

Reconfirming Provisional Voting

S.L. 2005-2, (SB 133) was part of the General Assembly's response to the decision of the State Supreme Court in *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005). The Court in that case said that the State Board of Elections had exceeded statutory authority when it ordered the counting in the 2004 election of provisional ballots cast by voters outside their precincts. The opinion did not hold harmless the voters whose ballots were subject to the State Board's actions. Instead it remanded the case to the trial court for action in accordance with the opinion in the contests that were the subject of the lawsuit, a race for Guilford County commissioner and a race for State Superintendent of Public Instruction.

The act makes multiple findings and amends G.S. 163-55, the earlier statute used by the Supreme Court as its chief basis for invalidating out-of-precinct provisional votes. The statute, enacted in 1967, appears to aim at restating Article VI, Section 2 of the Constitution of North Carolina, but uses more precinct-specific words. The act rewrites G.S. 163-55 to follow Article VI, Section 2 more closely, saying the voter is qualified to vote in the "precinct, ward, or other election district" until 30 days after moving out of it. The act adds language about election districts, clarifying that qualification to vote in a given race means residence in the district covered by the office. The act also adds to the statute the caption used in the parent constitutional provision, "Residence Period for State Elections," to indicate the statute's context.

The act changes how voters who have unreported moves within the county are to be guided by precinct officials to their precinct of residence. It adds language stating that these voters may vote a provisional ballot on the spot.

The act amends only slightly G.S. 163-166.11, the Help America Vote Act compliance statute about provisional voting, leaving in the "jurisdiction" language, but stating "as provided in G.S. 163-82.1." That statute makes the basic unit of voter registration the county.

The act amends G.S. 163-182.2(a)(4), which says provisional ballots must be counted for all races for which the voter was eligible to vote, but not any race for which the voter was not eligible to vote. The amendment clarifies that "eligible" means being registered in the county and qualified to vote in a race by residing in the territory the office covers.

This act became effective March 2, 2005, and being declaratory or existing law, applies to all elections held after January 1, 2004, the effective date of G.S. 163-166.11. The United States Department of Justice issued a letter on May 3, 2005, stating it would not object to the implementation of the act. (BG)

Election Contests

S.L. 2005-3 (SB 82) rewrites the procedures for the House and Senate to decide contested elections of the members of the respective chambers. It also restores the procedure, repealed in 1971, for the General Assembly to fulfill its constitutional duty of deciding contested elections for Council of State offices. The two procedures are parallel and make clear that the General Assembly's decision in either a legislative or Council of State election contest is not reviewable by State courts. The procedures have the following basic features:

- **Initiating a Contest. –** Only an unsuccessful candidate in the contested race may initiate a contest. If upon the convening of the General Assembly no candidate has been certified, then any candidate in that race may initiate a contest. The person who initiates the contest (the "contestant") must file a notice with the Principal Clerk of the appropriate chamber within 30 days after the election, 10 days after a winner is certified by the board of elections, or 10 days after the conclusion of the election protest procedure provided for in the election laws, whichever of those 3 things occurs latest. The notice must state the grounds: either objections to the eligibility or qualifications of the apparent winner (the "contestee"), objections to the conduct or results of the election, or both. Within 40 days after the filing of the notice, the contestant must file a petition with the Principal Clerk, and the contestee gets 5 days after the petition is filed to reply to it.
- **Answering a Contest. –** The contestee has 10 days to answer.
- **Discovery. –** The contestant has 20 days after the filing of the notice to complete depositions, and the contestee has 30 days.
- **Committee Hearings. –** The Committee on Rules of the appropriate chamber must hear the contest, unless another committee is designated by the rules of that chamber. The Committee may hold hearings, compel witnesses and the production of documents, issue subpoenas, and order the recounting of ballots in the election. It must make its recommendations to the full chamber, which must decide the contest.
- **Bad Faith. –** The prevailing party in a contest may take the other side to court for costs upon a showing of bad faith and lack of substantial justification.
- **Differing Procedures for Council of State Contest. –** The same basic procedures apply for a Council of State contest. Because two chambers are involved rather than one, there are these basic differences:
  - The Committee hearing the contest would be a select committee of five senators appointed by the President Pro Tempore of the Senate and five House members appointed by the Speaker of the House of Representatives.
  - The final decision would be, as required by Article VI, Section 2, of the Constitution of North Carolina, by a joint ballot of both chambers, and the contestant could win only with a majority of the members of the General Assembly voting on the issue. The ballots would be "written ballot," meaning that the members would sign their ballots and the public record would reflect how each member voted.

This act became effective March 10, 2005, and the United States Department of Justice issued a letter on May 3, 2005, stating it would not object to the implementation of the act.

During the 2005 Session of the General Assembly, the procedures for deciding a contested election for Council of State were used to determine the 2004 general election for Superintendent of Public Instruction. On August 23, 2005, the General Assembly declared June S. Atkinson the Superintendent of Public Instruction. (EC)

Early Prep for One-Stop Count

S.L. 2005-159 (HB 1102) allows a county board of elections to count one-stop (early voting) ballots electronically at the same time as other absentee ballots are counted, that is, at 2:00 p.m. on election day, rather than having to wait until the polls close. In addition, the act allows the board to take preparatory steps toward counting one-stop votes and mail absentee ballots earlier than 2:00 p.m., so long as the preparatory steps do not reveal results to any person not involved in the counting process. The act leaves in place the law that says no results may be made public until the polls close.

This act became effective July 7, 2005, and the United States Department of Justice issued a letter on September 13, 2005, stating it would not object to the implementation of the act. (BG)

Orange County Voting Centers

S.L. 2005-256 (SB 98) allows the Orange County Board of Elections to conduct a pilot program, upon approval of the State Board of Elections, for any or all primaries or elections occurring prior to January 1, 2007. The pilot program can only be conducted within Chapel Hill Township, which covers the southeastern quadrant of the county, including all of the municipal territory within the county of Chapel Hill and Carrboro, plus some unincorporated land. The pilot would consist of continuing the one-stop voting as provided in G.S. 163-227.2 on Election Day as the method of voting. Voting places, whether during the one-stop period or on Election Day, would be known as "voting centers." The rules for the pilot program are:

- Any registered voter may vote at any voting center during the one-stop period or on Election Day.
- On Election Day, the only places open to vote are those designated as voting centers. There must be at least one voting center in each township if any voter in that township is eligible to vote in that election.
- All the voting centers are to have a Web-based or online connection to the voter registration system.
- The State Board is to determine which ballots are to be made retrievable and identifiable by the county board of elections in order to ensure that the vote count is accurate. Only those that must be retrievable are to be retrievable.
- The Plan of Implementation may provide a different system for voter sign-in than the regular one-stop process, which requires completion of an absentee ballot application, but the process must be auditable. The voter, before voting, must sign that voter's name on the pollbook, other voting record, or voter authorization document, as provided by current law.
- A larger number of voting centers may be open on Election Day than during the earlier part of the one-stop period.
- Election returns must be reported by regular precinct as well as by voting center. For primary elections in 2007, those returns by regular precinct must be reported by May 1, 2007, and for the 2006 general election those returns by regular precinct must be reported by March 1, 2007.
- The State Board of Elections may allow the county board to designate voting centers in commercial buildings that are not public buildings. During the regular one-stop a building may be designated as a voting center, and the office of the county board of elections does not have to be designated as a voting center.
- Before voting centers may be used, a Plan of Implementation must be approved unanimously by the county board of elections and then approved by the Executive Director of the State Board of Elections. Prior to approval by the county board of elections, a public hearing must be conducted, and each county chair of the parties

must be notified. In establishing voting centers, the county board of elections must give first consideration to existing voting places.

- The Plan of Implementation must provide for appointment of election officials at voting centers so that political parties have a similar opportunity to recommend officials as if they were precinct polling places.
- The Plan of Implementation may treat the entire county as one precinct with multiple voting places on Election Day, but a voter must report any change of address within the county when appearing to vote.

This act became effective August 11, 2005. (BG)

(Note: Because this act affects only Orange County, it is not subject to preclearance under Section 5 of the Voting Rights Act. Orange is not one of the 40 counties in North Carolina that are covered by the preclearance requirement.)

Amend the Statutes Concerning the North Carolina Public Campaign Fund and Related Statutes

S.L. 2005-276, Sec. 23A.1 (SB 622, Sec. 23A.1) amends the statutes to require attorneys to pay an additional $50 surcharge each year with their annual State Bar dues. The additional surcharge is to be remitted by the North Carolina State Bar to the State Board of Elections to be used by the Public Campaign Fund. The Public Campaign Fund is an optional source of campaign funding for statewide judicial races.

This section became effective January 1, 2006, and the United States Department of Justice issued a letter on September 16, 2005, stating it would not object to the implementation of the act. (EC)

State Board of Elections Appointments

S.L. 2005-276, Sec. 23A.3 (SB 622, Sec. 23A.3) amends the statute governing appointments to the State Board of Elections to permit the Governor to make appointments from a list of nominees presented by the political parties, rather than requiring the Governor to make appointments only from the list of nominees.

This section became effective July 1, 2005. (EC)

Public Confidence in Elections

S.L. 2005-323 (SB 223) requires the State Board of Elections (State Board) to certify only voting systems that produce paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Any system, regardless of when purchased, would have to be submitted for compliance with the requirements of the process if the system is to be used in the 2006 elections. The act also requires that, beginning in 2006, the State Board of Elections must provide for sample paper hand-to-eye counts in random precincts over the State. The act allows for a limited experiment with voting systems that use non-paper means, in addition to paper means, of voter verification and ballot backup.

Effective with any upgrade or new voting system purchased beginning August 1, 2005, and effective for any voting system used in the 2006 elections, the State Board of Elections is directed to develop a Request for Proposal (RFP). The RFP would have to include the following requirements:

- Posting a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- Compliance with federal law.

- The capacity to include in precinct returns the votes cast by voters outside the voter's precinct as required by law.
- For electronic voting systems, the system must generate a paper record of each individual vote cast, which paper record must be maintained in a secure fashion and serve as a backup record for purposes of hand-to-eye counts, hand-to-eye recounts, and other audits.
- For direct record electronic voting systems, the paper record must be viewable by the voter before the vote is cast electronically, and the system must permit the voter to correct any discrepancy between the electronic summary of the vote and the paper record before the vote is cast.
- Review of source code by the county, the State Board of Elections, the Office of Information Technology, and the Chair of any legally recognized political party in North Carolina. Those entities may designate up to three agents to assist in the review.
- A statewide price for each unit of the equipment.
- An agreement by the vendor that if it breaches the upkeep part of the contract or goes into bankruptcy, it will permit the software to be turned over to the county for continuing use during the term of the contract and for review by the people who have a right to review the source code.

The RFP also must address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system. The State Board is given the duties of monitoring voting system contracts and of facilitating training and support.

Effective with any upgrade or new voting system purchased beginning August 1, 2005, vendors of voting systems in North Carolina must:

- Escrow their relevant software.
- Keep the escrowed material up to date and must swear that it is the code used in operating voting systems.
- Maintain an active office in North Carolina.
- Promptly notify the State Board of any decertification of the voting system elsewhere or of any known defect in a voting system used in the State, even if the defect shows up outside North Carolina.

Effective January 1, 2006, the State Board rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. If there is no statewide race, then the State Board must have a plan for obtaining an adequate sample using district or local races. Unless there is clear evidence to believe otherwise, the hand-to-eye count will prevail. If the difference between the hand-to-eye and the electronic or machine count is significant, a complete hand-to-eye count will then be conducted. If there is a material discrepancy between electronic or mechanical counts and hand-to-eye paper counts, the hand-to-eye prevails unless paper ballots have been lost or destroyed or there is another reason to conclude that the paper count is not the true count.

Effective January 1, 2006, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount.

The State Board is allowed to conduct an experiment, in no more than nine counties, with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup.

Except as noted above, this act becomes effective January 1, 2006, and it was submitted to the United States Department of Justice on September 7, 2005, for preclearance. (EC)

Election Administration Amendments

S.L. 2005-428 (HB 1115) makes several changes to the law dealing with election administration as follows:

- **Legal Recognition of "Runners"; No Candidate as Observer or Runner. –** The act allows a party chair to send a runner to a precinct to pick up the voter list. The runner can be anyone appointed by the party chair. The party chair must provide the county board of elections a list of which runners will go to which precincts before the runners are sent. The runner may enter the voting enclosure only where necessary to announce his or her presence. Upon receiving the list, the runner must leave immediately. No candidate in an election may be either an observer or runner. This section becomes effective January 1, 2006.
- **Allow Different Voting Systems in Same Precinct. –** The act states that the Executive Director of the State Board of Elections may permit a county to use more than one voting system in a precinct where doing so would be necessary to comply with State or federal law. It is expected that, to comply with the Help America Vote Act's requirement for a fully disabled-accessible station in every precinct, some counties may need to have two systems in the same precinct. This section became effective September 22, 2005.
- **Allow Administrative Voter Regulation Change if County Line Adjusted; Divided Habitation. –** The act authorizes the Executive Director of the State Board of Elections to move the voter's registration to the correct county administratively. The voter, who has not moved, would not need to submit a new voter registration application. Notice to the voter would be required. The act also includes a provision for deciding what side of a voting-relevant line a voter lives on if the line divides the house: The rule is the bedroom or usual sleeping area for that person controls. This section becomes effective January 1, 2006.
- **Change Protest Deadline from 6:00 p.m. to 5:00 pm. –** The act changes the statutory deadline to reflect the regular office hours of the county boards of election. This section becomes effective January 1, 2006.
- **Same Voter Assistance Rules for One-Stop as for Election Day. –** At the polls on Election Day, a voter whose illiteracy or disability requires him or her to have assistance to vote may receive assistance from anyone other than his or her employer or union representative. If not illiterate or disabled, a voter may receive assistance from a specified group of relatives. Those provisions reflect federal law. Prior to the enactment of this act, at a one-stop site, however, the law was different: A one-stop voter who needed assistance or who was blind could receive assistance only from a county board of elections member, a county election director, a board employee, a near relative of the voter or the voter's verifiable legal guardian. Anyone else providing assistance to a voter at a one-stop site is subject under G.S. 163-226.3 to prosecution for committing a Class I felony. The bill makes the one-stop rules on assistance the same as those at the polls on Election Day. It changes the felony statute accordingly.
- **One-Stop Precinct Transfers Need not be Provisionals. –** Prior to enactment of this act, if a person moved more than 30 days before an election within the county where registered to vote but did not notify the board of elections of the move, the person could show up at the new voting place and still be allowed to vote. But, since the voter's name was not on the books there, he or she had to vote a provisional ballot. If such a voter with an unreported move went to vote at a one-stop site, however, most counties allowed that person to vote the same kind of retrievable ballot as other one-stop voters rather than a provisional ballot. The reasoning, endorsed by the State Board of Elections, was that the one-stop site had on-line access to the entire county's voter registration database and had all ballot styles

available, and the one-stop vote was retrievable anyway. At least one large county, Wake, felt that even at a one-stop site an unreported-move voter was legally required to vote a provisional ballot. This practice slowed down the one-stop voting process and led to Wake having more provisional ballots to count than even its large size warranted. The act clarifies that a voter who has not reported a move within the county does not, on that account, need to vote a provisional ballot at a one-stop site. This section became effective September 22, 2005.

- **Clean Up One-Stop Statute Requiring Instruction in Voting by Mail. –** The act removes statutory language on one-stop voting which required officials at a one-stop site to furnish one-stop voters, who are there voting in person, with instructions on how to vote mail absentee. This section became effective September 22, 2005.
- **Two Changes to Filing Fee Statute. –** The statute sets the candidate's filing fee at 1% of the annual salary of the office sought, except it sets a raw dollar amount for offices "compensated entirely by fees." The act specifies that the salary is the starting salary for the office, rather than the incumbent's salary, if the two are different for the purposes of determining candidate filing fees. If no starting salary can be determined, then the salary used for the 1% is the incumbent's salary as of January 1 of the election year. The act also removes the references to offices compensated entirely by fees, since such offices no longer exist. This section became effective September 22, 2005.
- **Allow Cancellation of Old Registration when New One Appears. –** Prior to the enactment of this act, the voter registration form called for a person registering in a new county to cancel any registration they had in a previous county. Sometimes applicants neglected to complete the cancellation part of the form. The act directs the State Board of Elections, which runs the statewide computerized voter registration system, to notify the county board in the old county of the new registration. The board in the old county would then be required to cancel the registration. The State Board is required to adopt rules to prevent disenfranchisement, including adequate notice to the voter whose registration is going to be cancelled. This section becomes effective January 1, 2006.
- **Update Statute about Access to Voter Registration Data. –** The act updates the access to records statute, removing references to old technology and the option not to have lists on computer. It does not require the county boards to provide its list to county party chairs on paper. This section became effective September 22, 2005.
- **Canvass on 10th Day after General Election. –** The act moves the county canvass to the 10th day for even-year general elections only. For other elections ("election" is defined to include primary), the canvass stays on the 7th day. Conforming changes are made to other dates in the statutes. This section becomes effective January 1, 2006.
- **Clarify that Electronic Pollbooks may be Used. –** The act requires the State Board of Election to permit the use of electronic registration records in the voting place in lieu of paper pollbooks or other records. This section became effective September 22, 2005.
- **General Election Winner. –** This section places in statute the rule, assumed to be the case, that in a general election the candidate with the highest number of votes for each office should be declared elected. This section became effective September 22, 2005.
- **Purged Voter Reinstated. –** This section specifies what has been the North Carolina practice ever since the National Voter Registration Act (NVRA) was implemented here: if a voter has been removed from the rolls in accordance with NVRA mail verification procedures and that person shows up to vote and affirms that the person has never moved from the county, the person must be reinstated and must be allowed to vote. This section became effective September 22, 2005.

- **Supplying Missing Information on Form. –** This section provides that if a voter who otherwise properly fills out a voter registration form nonetheless fails to check a box for United States citizenship, the voter may correct that omission at any time before voting on Election Day. The box in question is required by the Help America Vote Act (HAVA) and is duplicative of another United States citizenship affirmation that is elsewhere on the North Carolina voter registration form. In 2004, the State Board of Elections found that some voters overlooked the box, but signed the affirmation of citizenship. The Board knew federal law required the boxes had to be checked, and believed that federal law would allow the omission to be corrected up to voting time, but was unsure whether State law permitted such corrections late in the process. This section clarifies that issue and became effective September 22, 2005.
- **Precinct Boundary Program. –** This section renews for the 2010 Census North Carolina's participation in the Census Redistricting Data Program. The program is in its beginning stages. This section takes G.S. 163-132.1, the statutory section that defined our participation in the 2000 Census Redistricting Data Program, updates the first subsection stating North Carolina's intention to participate, leaves the last subsection giving the Legislative Services Commission rulemaking power in administering its role in the program, and strips out the subsections in between, which prescribed the details specific to North Carolina's participation in the 2000 effort. The details of North Carolina's participation could be fleshed out later as the federal program develops. The purpose of the program generally is to try to get the Census Bureau to put block boundaries where North Carolina's precinct lines are and to make sure North Carolina's precinct lines go on Census block boundaries so that in redistricting the General Assembly -- if it wants to -- can draw districts without splitting precincts. The leaders of both parties in both houses of the General Assembly have already signed a letter indicating their approval for North Carolina to participate in the program. This section became effective September 22, 2005.
- **Recasting Lost Votes. –** This section permits the State Board of Elections to allow a county board to allow a known group of voters whose votes were lost beyond retrieval to recast those votes. It specifies that the procedure would not be a "new election." In the case of the 2004 Commissioner of Agriculture race, a majority of the State Board did not believe it had the authority to allow the 4,438 whose votes were lost in Carteret County to recast their votes. This section becomes effective January 1, 2006.

Generally, this act became effective as noted above, and the United States Department of Justice issued a letter on October 31, 2005, stating it would not object to the implementation of this act. (BG)

Campaign Finance Amendments

S.L. 2005-430 (HB 1128) makes several changes to the campaign finance laws as follows:

- **Audit Trail for Contribution by Money Order. –** The act directs the State Board of Elections (State Board) to prescribe methods to ensure an audit trail for contributions by money order so that the identity of the contributor can be determined.
- **Payment of Expenses by "Any Verifiable Form." –** The act states that the expenses now payable only by check may be paid by "a verifiable form of payment" and directs the State Board to prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined.
- **Debugging the Judicial Campaign Act. –** In 2002, the General Assembly established the Public Campaign Financing Fund to support campaigns of candidates

for the State Supreme Court and Court of Appeals who agree to certain limitations on contributions and expenditures. The new system was first implemented in the 2004 election. These sections are the result of bugs the State Board and judicial candidates found in that initial implementation.

- **Eligibility for Certification to Receive Funds. –** Prior to enactment of this act, in order to certify a candidate to receive funds, the State Board had to determine whether a candidate met certain criteria including whether the candidate is "qualified to receive votes on the ballot as a candidate for the office." The State Board, and judicial candidates, were uncertain what that language meant: Did it mean simply the candidate met the constitutional qualifications for the office, being 21, a North Carolina citizen, and an attorney? Or did it mean the person had to have filed a notice of candidacy? This section specifies that it means the person must have filed a notice of candidacy.
- **What a Candidate may Raise and Spend during Qualifying Period. –** After a candidate is certified and the date of the nonpartisan primary (which marks the end of the qualifying period), it is clear that a candidate may spend only money received from the public fund plus any money left over from the qualifying period. But, the State Board and some judicial candidates found the law unclear as to what could be raised and spent during the period that begins when the candidate files a declaration of intent to participate in the program and ends on primary day, when the qualifying period ends. It was unclear whether candidates could spend leftover money they raised before they filed their intent and whether they could raise or spend amounts under $10. (Qualifying contributions must come in amounts from $10 to $500.) This section rewrites the law to make clear that from the declaration of intent to the primary day, a candidate may accept in contributions only:
  - Qualifying contributions.
  - Contributions under $10 from North Carolina voters.
  - Personal and family contributions of $1,000 per person.

  Those contributions may not exceed the maximum amount a candidate may receive in qualifying contributions. In addition to those contributions, during this period a candidate may spend only:
  - Leftover money of that raised from September 1 before the election year through the filing of intent. During that time a candidate may raise up to $10,000 from any otherwise legal source without foreclosing the chance to be certified under the Fund.
  - Any rescue funds triggered by spending by opponents.

  The section also provides that debt by a candidate for a campaign expenditure counts toward the candidate's $1,000 limit over contributing to his or her own campaign.
- **Timing of Voter Guide Distribution. –** This section changes the distribution dates of the Voter Guide for nonpartisan candidates for the North Carolina Supreme court and North Carolina Court of Appeals to no more than 14 days and no fewer than 7 days before the beginning of the early voting period.
- **Applying Scope and Opinion Provisions to All Campaign Finance Articles. –** Prior to enactment of this act, statutory provisions limited the scope of Article 22A of Chapter 163 of the General Statutes, the main campaign finance act, to elections to State and local offices in North Carolina and gave the Executive Director of the State Board the duty to provide written opinions about whether an inquired-about practice complies with Article 22A. If a person received such an opinion and complied with it, that person could not be prosecuted for an Article 22A violation. In addition to Article 22A, four other Articles in Chapter 163 regulated campaign finance:
  - 22B The Political Parties Financing Fund.

- 22D The Public Campaign Financing Act (for Supreme Court and Court of Appeals).
- 22E Electioneering Communications on television and radio.
- 22F Electioneering Communications through mass mailings and phone banks.

The State Board staff requested that the scope and written opinion statutes be applied to the other four Articles as well as to 22A. These sections do that.

- **Reporting Contributions for Electioneering Communications. –** In 2004, the General Assembly prohibited the use of corporate or union money for an "electioneering communication," a message sent 30 days before a primary or 60 days before a general election where the message targets the relevant electorate through radio, television, mass mailing, or phone bank and where the message refers to a candidate for a statewide office or the General Assembly. That act, patterned after the federal McCain-Feingold Act, also requires an organization doing electioneering communications to report contributions and expenditures. During its initial implementation of the act in 2004, the State Board staff found that one national organization used the wording of the act to argue that it was not required to report contributions to a separate, segregated fund. Instead, the organization insisted it was only required to make a large, unrevealing report of contributions from all over the nation. This section clarifies that if an organization makes electioneering communications, it must pay for the communications out of a separate, segregated account consisting of money only from legally acceptable sources, and it must report contributions to and spending from that fund.
- **Definition of "Corporation." –** This section changes the definition of "corporation" in G.S. 163-278.6(7) to include corporations whether or not they do business in North Carolina. G.S. 163-278.15 prohibits corporations from making contributions and expenditures regardless of whether they do business in North Carolina. But the definition, written in the 1970s, says it's not a "corporation" under North Carolina campaign finance law unless it does business in North Carolina.
- **Training for Treasurers. –** The act requires the State Board of Elections to provide training for every treasurer of a political committee before the election in which the political committee is involved. The State Board is required to provide each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing training and would be required to conduct regional seminars. That training is free of charge.

This act becomes effective December 1, 2005, and the United States Department of Justice issued a letter on October 31, 2005, stating it would not object to the implementation of the act. (BG)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 7
Courts, Justice, and Corrections

Brenda Carter (BC), Tim Hovis (TH), Hal Pell (HP), and Brad Krehely (BK)

Enacted Legislation

Clerks May Order Mediation

S.L. 2005-67 (HB 1015) authorizes the clerk of superior court to order mediation in matters within the clerk's jurisdiction. This authority would not apply to matters involving mortgages and deeds of trust (Chapter 45 of the General Statutes) and adoption procedures (Chapter 48 of the General Statutes). The Supreme Court is authorized to adopt rules to implement this section.

This act became effective May 26, 2005, and applies to all matters pending before a clerk of superior court on, or filed with the clerk after, the date the Supreme Court adopts rules implementing this act. (BK)

Notary Public Official Recommendation

S.L. 2005-75 (SB 763) removes the requirement of a recommendation from an elected official for any notary applicant who seeks to receive the oath of office from the register of deeds of a North Carolina county that has at least 15,000 active notaries on record as of January 1 of the year in which the application is filed.

This act becomes effective January 1, 2006, and applies to notary public applications filed on or after that date. (TH)

Inspection of Correctional Facilities

S.L. 2005-98 (HB 1226). See **State Government**.

Conference of Clerks of Superior Court

S.L. 2005-100 (HB 878) creates the Conference of Clerks of Superior Court (Conference) for the purpose of improving the administration of justice by coordinating the efforts of the various clerks, and by assisting the clerks in the administration of their offices. The act provides for biannual meetings of the Conference and for the organization and the election of its officers. The Conference is authorized to cooperate with citizens and other agencies to promote the effective administration of justice, to develop advisory manuals to assist in the organization and administration of the clerk's offices, and to work with the Administrative Office of the Courts and the School of Government at the University of North Carolina at Chapel Hill, to provide education and training programs for clerks and their staff.

This act became effective July 1, 2005. (BC)

Involuntary Commitment Affidavit

S.L. 2005-135 (HB 1199). See **Health and Human Services**.

Blakely Decision/Conform State Law

S.L. 2005-145 (HB 822). See **Criminal Law and Procedure**.

Copies of Files/Appointed Appellate Attorneys

S.L. 2005-148 (SB 689) clarifies that the clerk of superior court is responsible for providing appointed appellate counsel in indigent cases with copies of the complete trial division file, including any requested documentary exhibits.

This act became effective July 5, 2005. (HP)

Jury Exemptions/72 and Older

S.L. 2005-149 (SB 321) allows a person who is 72 or older and summoned as a juror to request either a temporary or permanent exemption. The judge or trial court administrator has discretion to accept or reject either, including substituting a temporary exemption for a requested permanent exemption.

This act became effective October 1, 2005, and applies to persons summoned for jury service on or after that date. (BK)

Mediation Amendments

S.L. 2005-167 (SB 806) makes a wide range of changes to the statutes addressing the current practices of mediated settlement conferences in Superior Court, mediation in District Court domestic cases, and the regulation of mediators and other 'neutrals' who are certified or otherwise qualified or participating in proceedings pursuant to G.S. 7A-38.1, 7A-38.3, or 7A-38.4A. The changes include revisions to the statutory language to achieve the following:

- Clarify the inadmissibility in civil actions of statements made during settlement conferences and other mediation proceedings.
- Clarify the role of the Dispute Resolution Commission (Commission) in certifying and training mediators.
- Increase the membership in the Commission to a total of 15 members, by adding a clerk of superior court to be appointed by the Chief Justice of the Supreme Court.
- Authorize the chair of the Commission to employ staff as necessary to carry out Commission duties.
- Allow the Commission to employ counsel or assistance from the Attorney General's office in conducting hearings.
- Authorize the chair of the Commission to administer oaths, sign and issue subpoenas, and apply to the Superior Court Division of the General Court of Justice for "any order necessary to enforce the power conferred in this section."
- Require that information collected relating to mediator certification or qualification be kept confidential.
- Require that final determinations of the Commission relating to certification or disciplinary actions taken be filed with the Wake County clerk of court.

Evidence of statements made by any person present at a mediated settlement conference or other settlement proceeding under G.S. 7A-38.1 are inadmissible. The Supreme Court is authorized to adopt standards for all "neutrals" qualified or participating in proceedings pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B, or 7A-38.4A. The Commission may still operate according to rules and regulations adopted by the Supreme Court but must operate independently of the Director of the Administrative Office of the Courts except in matters relating to personnel and budgeting. Additional powers are granted to the Commission to conduct investigations or hearings.

Provisions of this act relating to the admissibility of evidence became effective October 1, 2005 and apply to mediations commenced on or after that date. All other provisions of this act became effective July 7, 2005. (TH)

North Carolina Uniform Trust Code

S.L. 2005-192 (SB 679). See **Property, Trusts and Estates** and **Health and Human Services**.

Campus Police Act

S.L. 2005-231, Secs. 1 and 12 (SB 527, Secs. 1 and 12) remove the statutory authority for a public or private educational institution to provide its own on-site police security personnel from the Company Police Act and create the same authority under a new Article, titled the "Campus Police Act." Under the act, the following entities may apply to the Attorney General for certification as a campus police agency: (1) public educational institutions operating under the Board of Governors of The University of North Carolina or the State Board of Community Colleges and (2) private educational institutions licensed under state statute or exempt from licensure. The Campus Police Act contains parallel provisions to the current campus police sections of the Company Police Act including:

- Liability insurance requirement.
- Attorney General's authority to establish minimum standards for education and training.
- Record keeping.
- Oaths and authority of police officers.
- Badges, uniforms, weapons, and vehicles.
- Compensation.
- Terms for renewal, termination, and expiration of certification.
- The Attorney General's immunity from liability for the acts or omissions of the campus police offices.
- Fees.
- Penalties and enforcement.

Upon enactment, all certificates issued to police agencies at private institutions of higher education and commissions to their police officers, automatically convert to certification and commissions under the new Campus Police Act. Any educational institution that has a licensed campus police agency may elect to continue under the Company Police Act by written request to the Attorney General. The request must be filed no later than October 1, 2005.

Sections 2, 3, 8, and 9 make conforming changes.

This act became effective July 28, 2005.

Sections 4 and 5 add "campus police" to the definition of "qualified" law enforcement officers in the concealed carry permit statutes. Sections 6.1 and 6.2 provide that assault on a company police officer or campus police officer is a Class A1 misdemeanor. Sections 7 and 10 make conforming changes to statutes that currently reference company police officer authority. Section 11 gives campus police officers commissioned by the Attorney General the authority to tow vehicles parked in areas designated for handicapped drivers and passengers.

For additional information on these sections, see **Criminal Law and Procedure** and **Transportation.** (BK)

Indigent Defense Technical Revisions

S.L. 2005-250 (SB 592) makes technical revisions to current law governing indigent defense and entitlement to counsel to correspond with current practices and to comply with current law. The act includes the following:

- Adds attorneys' fees to the types of funds to be disbursed by the clerk of superior court to correspond with the payment priority list in the statute.
- Makes technical corrections to adjust statutory references to correspond to the correct sections of recodified statutes.
- Clarifies that a $50 fee is assessed only when the defendant is convicted and deletes references relating to when a defendant fails to pay the fee at the time of appointment.
- Clarifies that attorneys' fees are separate from court costs and that payment of attorneys' fees may also be included as a condition of probation. It also clarifies that a person placed on probation is required to pay all fees and costs for appointed counsel, as a condition of probation, in addition to court costs.
- Makes a technical correction to adjust statutory references to correspond to current law on appointment of counsel.

This act became effective August 4, 2005. (HP)

Copy Costs in Indigent Cases

S.L. 2005-251 (SB 593) provides that clerks of court must not charge for preparing copies requested by counsel appointed to represent an indigent person, so long as the request is made in connection with the appointed case and is during the period of appointment.

This act became effective July 1, 2005, and applies to fees charged on or after that date. (HP)

Recoupment by Court-Appointed Attorneys

S.L. 2005-254 (SB 594) amends the law governing recoupment for legal services provided to indigent persons, as follows:

- Exempts indigent persons from paying for legal services rendered to perfect an appeal to the appellate division, or in post-conviction proceedings, if all of the matters raised are vacated, reversed, or remanded for a new trial or resentencing.
- Allows the court to hold a parent responsible for payment of an attorney or guardian ad litem in cases where a juvenile has been adjudicated to be abused, neglected, or dependent, or where the parent's rights have been terminated.

The exemption for indigent persons became effective August 5, 2005. The provision holding a parent responsible for payment became effective October 1, 2005. (HP)

Divide District Court District 20 and Prosecutorial District 20 into 20A and 20B and Realign Superior Court Districts 20A and 20B/Establish Additional Superior Court Judgeship for District 20B Effective January 1, 2011/Divide Superior Court, District Court, and Prosecutorial Districts 29 into Districts 29A and 29B

S.L. 2005-276, Sec. 14.2 (SB 622, Sec. 14.2) divides District Court District 20, which consisted of 7 judges covering Stanly, Union, Anson, and Richmond counties. The new District 20A has 4 judges and is comprised of Stanly, Anson, and Richmond counties; District 20B has 3 judges and is comprised solely of Union county. The act realigns Superior Court Districts 20A and 20B by moving Stanly County to District 20A and providing for 2 resident judges in that district; District 20B is comprised solely of Union County, with 1 resident judge. The act divides prosecutorial District 20. The new prosecutorial District 20A is allocated 8 full-time assistant district attorneys and is comprised of Anson, Richmond, and Stanly counties; the new District 20B is allocated 7 full-time assistant district attorneys and is comprised of Union County.

The act divides District Court District 29, which consisted of 7 judges covering Henderson, McDowell, Polk, Rutherford, and Transylvania counties. The new District 29A has 3 judges and is comprised of McDowell and Rutherford counties; the new District 29B has 4 judges and is comprised of Henderson, Polk, and Transylvania counties. The act divides Superior Court District 29 into Districts 29A and 29B, each with 1 resident judge. Superior Court District 29A is comprised of McDowell and Rutherford counties; District 29B is comprised of Henderson, Polk, and Transylvania counties. Effective January 1, 2011, Superior Court District 20B (Union County) will consist of 2 resident judges; the additional judge will be elected in the 2010 general election. The act divides prosecutorial District 29. The new prosecutorial District 29A is allocated 5 full-time assistant district attorneys and is comprised of McDowell and Rutherford counties; District 29B is allocated 6 full-time assistant district attorneys and is comprised of Henderson, Polk, and Transylvania counties. The act provides for investigatorial assistants in the new districts.

The realignment and division of the court districts become effective December 1, 2005. Division of the prosecutorial districts become effective January 1, 2007; district attorneys for the new prosecutorial districts will be elected in the 2006 general election.

In the **Budget Technical Corrections Act**, S.L. 2005-345, Sec. 27 (HB 320, Sec. 27) changes were made to the section outlined above by dividing District 20B which is comprised of Union County into District 20B with 1 judge and District 20C with 2 judges. Each district is comprised of part of Union County. The district court judgeship for Union County in District 20B is filled by the current judge from the current District 20 who resides in that portion of the county included in District 20B. The 2 district court judgeships for District 20C are filled by the other 2 judges from the current District 20 who reside in Union County. The terms for all 3 judges expire the first Monday in December 2008 and the judges' successors will be elected in the 2008 general election.

This section became effective July 1, 2005, but as to the amendment to S.L. 2005-276 outlined above, the changes will take effect December 1, 2005. (BC) (TH)

Transfer Responsibility for Providing Legal Assistance to Inmates from the Department of Correction to the Office of Indigent Defense Services

S.L. 2005-276, Sec. 14.9 (SB 622, Sec. 14.9) makes the Office of Indigent Defense Services responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in cases in which the State is legally obligated to provide legal

assistance and access to the courts to inmates in the custody of the Department of Correction. The Director of the Office of Indigent Defense Services is directed to contract with Prisoner Legal Services, Inc., to provide legal services and access to the courts for inmates for a period of two years, from October 1, 2005, through September 30, 2007. During that time, the Director of Indigent Defense Services is to evaluate the services provided by Prisoner Legal Services, Inc. The Office of Indigent Defense Services is required to provide an interim report of its evaluation to the Chairs of the Senate and House of Representatives Appropriations Committees and Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006, and a final report of its evaluation by May 1, 2007. The interim report is to describe the evaluation process and criteria, the status of the evaluation, and any preliminary findings. This section of the 2005 Appropriations Act transfers $1,883,865 for the 2005-2006 fiscal year and $2,511,820 for the 2006-2007 fiscal year from the Department of Correction to the Office of Indigent Defense Services to implement this section.

The change in responsibility for providing inmates in the custody of the Department of Correction with legal assistance and access to the courts became effective October 1, 2005. The remainder of this section became effective July 1, 2005. (BC)

Clarify that Fees Paid to Attorneys Representing Indigent Clients shall be Fixed in Accordance with the Rules Adopted by the Office of Indigent Services and may not be set at Higher Rates without the Approval of the Office of Indigent Defense Services

S.L. 2005-276, Sec. 14.13 (SB 622, Sec. 14.13) amends the law concerning counsel fees for an attorney who represents an indigent person. This section provides that fees must not be set or ordered at rates higher than those established by rule without the approval of the Office of Indigent Defense Services.

This section became effective July 1, 2005. (BC)

Implementation of Treatment Staffing Model at Youth Development Centers

S.L. 2005-276, Sec. 16.6 (SB 622, Sec.16.6). See **Labor and Employment**.

Department of Correction Security Staffing Formulas

S.L. 2005-276, Sec. 17.4 (SB 622, Sec. 17.4). See **Labor and Employment.**

Extend Limits of Confinement/Terminally Ill and Permanently and Totally Disabled Inmates

S.L. 2005-276, Sec. 17.13 (SB 622, Sec. 17.13) allows the Secretary of Correction to extend the limits of confinement for an inmate to receive palliative care only if (1) the inmate is terminally ill or permanently and totally disabled, (2) the Secretary finds that the inmate no longer poses a significant public safety risk, and (3) the Secretary has consulted with victims of the inmate or the victims' families. A "terminally ill" inmate is one who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing and was not diagnosed upon entry to prison, that will likely produce death within six months, and that is so debilitating that it is highly unlikely that the inmate poses a

significant public safety risk. A "permanently and totally disabled" inmate is one who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was unknown at the time of sentencing and was not diagnosed upon entry to prison, and that is so incapacitating that it is highly unlikely that the inmate poses a significant public safety risk. The Department's medical director must notify the Secretary immediately when an inmate has been classified as terminally ill and must provide regular reports on inmates classified as permanently and totally disabled. The Secretary must act expeditiously in determining whether to extend the limits of confinement. In the case of a terminally ill inmate, the Secretary must make a good faith effort to reach a determination within 30 days of receiving notice of the inmate's terminal condition.

This section became effective July 1, 2005. (BK)

Criminal Justice Partnership Program

S.L. 2005-276, Sec. 17.23 (SB 622, Sec. 17.23) clarifies that funds from the State Criminal Justice Partnership Program must not be used to fund case manager positions when the Division of Community Corrections or the Treatment Alternatives to Street Crime (TASC) Program can provide those services. The Department of Correction (Department) may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program, but may not deny funds to support both a residential program and a day reporting center in a county if the Department determines the county has a demonstrated need and a fully developed plan for each type of sanction. The Department must report by February 1 of each year on the status of the State-County Criminal Justice Partnership Program. The Department must give the report to the Chairs of the Senate and House of Representatives Appropriations Committees, the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

Under this section, counties may not use more than 25% of their community-based corrections funds to serve sex offenders released from jail prior to trial. It also modifies the description of who is eligible to participate in community-based programs. This section changes the formula for determining grant amounts in the following ways: (1) 25% based on a fixed equal dollar amount for each county (formerly 20%); (2) 50% based on the county share of the State population (formerly 60%); and (3) 25% based on the intermediate punishment entry rate for the county using the total of the 3 most recent years of data divided by the average county population for that same period. The data used for this funding formula must be updated once every 3 years. Notwithstanding this formula, the following restrictions apply to the 2005-2006 fiscal year: (1) each county's formula allocation must be capped at no less than 99% and no greater than 120% of the funds allocated to that county for the 2004-2005 fiscal year; and (2) no funds can be used to fund programs that did not participate in the Criminal Justice Partnership Program in fiscal year 2004-2005. The following restriction applies to the 2006-2007 fiscal year: each county's formula allocation must be capped at no less than 95% and no greater than 120% of the funds allocated to that county for the 2004-2005 fiscal year.

The provision that changes the description of who is eligible to participate in community-based programs becomes effective July 1, 2006. The provision prohibiting counties from using more than 25% of their community-based corrections funds to serve sex offenders released from jail prior to trial expires July 1, 2006. The remainder of this section became effective July 1, 2005. (BK)

Provide that the Terms of the Members of the Post-Release Supervision and Parole Commission Serving on June 30, 2005, Expire on that Date and Restructure the Commission to Consist of One Full-Time Member and Two Half-Time Members

S.L. 2005-276, Sec. 17.25 (SB 622, Sec. 17.25) changes the membership of the Post-Release Supervision and Parole Commission from three full-time members to one full-time member and two half-time members, as the title indicates. As with prior law, members will continue to be appointed by the Governor. The terms of office of Commission members expire on June 30, 2005.

This section became effective June 30, 2005. (TH)

Resource Prosecutor Longevity

S.L. 2005-276, Sec. 29.23A (SB 622, Sec. 29.23A) adds "resource prosecutors" to the list of court officials eligible for longevity pay, in lieu of merit and increment raises paid to regular State employees. A resource prosecutor is defined as "a former assistant district attorney who has left the employment of the district attorney's office to serve in a specific, time-limited position with the Conference of District Attorneys."

This section became effective July 1, 2005. (TH)

Longevity Pay/Clerks of Court

S.L. 2005-276, Sec. 29.23B (SB 622, Sec. 29.23B) adds magistrates to the list of court officials eligible for longevity pay, in lieu of merit and increment raises paid to regular State employees.

This section became effective July 1, 2005. (TH)

General Court of Justice Fee Increases

S.L. 2005-276, Sec. 43.1 (SB 622, Sec. 43.1) increases the amount of costs that may be assessed in various district and superior court cases.

Section 43.1(a) increases costs that may be assessed against a defendant or prosecuting witness in a criminal district court case for support of the General Court of Justice from $76 to $85.50. In criminal superior court cases, costs are increased from $83 to $92.50.

In civil actions, Section 43.1(b) increases costs that may be assessed for the support of the General Court of Justice from $69 to $79 in superior court. Costs that may be assessed for district court cases are increased from $54 to $64. Costs for civil cases heard before a magistrate are increased from $43 to $53.

Section 43.1(c) increases costs that may be assessed in special proceedings in superior court from $30 to $40.

Section 43.1(d) increases costs that may be assessed in the administration of trusts and estates from $30 to $40 and increases the maximum amount that may be assessed per every $100 of the gross estate from $3,000 to $6,000.

Section 43.1(e) increases the fee charged for filing a petition of expunction of a criminal record from $65 to $125.

Section 43.1(f) authorizes the court to charge a fee of $90 for any person who, as a condition of probation, is required to wear an electronic monitoring device.

Section 43.1(g) increases court costs that may be assessed for failure to wear a seatbelt from $50 to $75.

This section became effective September 1, 2005, except that changes made in subsection (a) as noted above do not apply to misdemeanor or infraction cases in which the citation or other criminal process was issued before that date and the case was disposed of on or after September 1, 2005, by written appearance, waiver of trial or hearing, or pleas of guilt or admission of responsibility. In those cases, costs will be the lesser of the costs specified in subsection (a) or costs specified in the notice portion of the defendant's or respondent's citation or other criminal process. (TH)

Device Fee for House Arrest with Electronic Monitoring

S.L. 2005-276, Sec. 43.2 (SB 622, Sec. 43.2) authorizes a fee of $90 for any person placed on house arrest with an electronic monitoring device. The court may exempt the fee only for good cause and upon motion of the person placed on house arrest.

This section became effective September 1, 2005. (TH)

Fee for Police Information Network

S.L. 2005-276, Sec. 43.4 (SB 622, Sec. 43.4) authorizes the Attorney General to impose a one-time, initial fee of $2,650 for agencies to participate in the Police Information Network (Network).

The Attorney General is also authorized to impose a monthly fee of $300 on participating agencies to offset the cost of operating and maintaining the Network, plus an additional amount for each device linked to the Network after the first 7 desktop devices. The additional amount is $25 for each desktop device and $6 for every mobile device. Section 43.4(b) increases the fee for a mobile device from $6 to $12 per device effective January 1, 2006.

This section became effective July 1, 2005, except that as noted above Subsection (b) increasing the fee for each mobile device becomes effective January 1, 2006. (TH)

Dispose of Firearms/Benefit Law Enforcement

S.L. 2005-287 (HB 1016) provides that certain firearms that are seized, confiscated, or received by a law enforcement agency may be used, sold, traded, or exchanged by the law enforcement agency.

This act became effective August 22, 2005. (BK)

Death Penalty/Add Aggravating Factor

S.L. 2005-295 (HB 1436). See **Criminal Law and Procedure**.

Child Custody/Guardianship Jurisdiction

S.L. 2005-320 (HB 801). See **Children and Families**.

Concealed Carry by Law Enforcement Officers

S.L. 2005-337 (HB 1401). See **Criminal Law and Procedure**.

Probation Stayed/Appeal for Trial De Novo

S.L. 2005-339 (HB 1145). See **Criminal Law and Procedure**.

Crime Lab Cost Recovery Fee

S.L. 2005-363 (HB 890) amends the law concerning court costs in criminal actions to require the court to assess a $300 fee for the costs of the services of a crime laboratory operated by a local government, in cases in which the laboratory has performed DNA analysis of the crime, tested the defendant for the presence of alcohol or controlled substances, or analyzed any controlled substance possessed by the defendant. The fee will be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation (SBI) under a provision requiring payment of the fee when services are performed by the SBI.

This act became effective October 1, 2005, and applies to court costs assessed or collected on or after that date for offenses committed on or after that date. (BC)

Expedite Juvenile Proceedings/Guardians ad Litem

S.L. 2005-398 (HB 1150). See **Children and Families**.

Responsible Individuals List/Expunction Process

S.L. 2005-399 (HB 661). See **Children and Families**.

Business Court Cases/Fee

S.L. 2005-425 (HB 650) authorizes the Chief Justice of the North Carolina Supreme Court to assign special superior court judges to hear complex business cases and increases the filing fee for those cases from $69 to $269. Complex business cases include actions that involve a material issue related to the law governing corporations, partnerships, limited liability companies and limited liability partnerships, or securities law, antitrust law, State trademark or unfair competition law, intellectual property law, or electronic commerce.

The act also amends the law concerning the term of district court judges to provide that each four-year term will begin on January 1 following the election, rather than on the first Monday in December.

The provision concerning the terms of district court judges became effective September 22, 2005, and applies to judges elected in 2006 and thereafter. The remainder of the act becomes effective January 1, 2006, and applies to cases filed and fees collected on or after that date. (BC)

Amend Substance Abuse Laws

S.L. 2005-431 (SB 705) authorizes the Department of Justice to provide to the North Carolina Substance Abuse Professional Practice Board the criminal history of any applicant for registration, certification, or licensure as a substance abuse professional under Article 5C of Chapter 90 of the General Statutes, North Carolina Substance Abuse Professionals Certification Act. Upon making a request the Board must submit the applicant's fingerprints and a form signed by the applicant consenting to the criminal record check and use of the applicant's fingerprints and other identifying information. The Board must keep all information obtained through the criminal record check confidential.

This act became effective September 22, 2005.
Section 1 of the act provides for the licensure of substance abuse professionals.
For additional information, see **Occupational Boards and Licensing**. (TH)

Major Pending Legislation

SB 523 would amend the North Carolina Constitution to allow the Governor to appoint appellate Justices and Judges in the State. Following appointment, the Justice or Judge may serve an initial term of office which would extend through the last day of February after the next general election for members of the General Assembly that is held more than 24 months after the appointment. At that election, the Justice or Judge may continue to serve only if confirmed by vote of the people. If the Justice or Judge is not confirmed, the Governor may appoint a new member to fill the seat. The bill also authorizes the Governor to appoint the Chief Justice of the North Carolina Supreme Court from the members of the Court. The bill has passed the Senate and is pending in the House Committee on Judiciary I. (TH)

Studies

Referrals to Existing Commissions/Committees

Study of Local Detention Centers

S.L. 2005-276, Sec. 16.9 (SB 622, Sec. 16.9) requires the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee (Committee) to study the 4 juvenile detention centers, located in Durham, Guilford, Forsyth, and Mecklenburg Counties. The review shall include the following:

- Recent admission trends and future population projections.
- Offense history and assessed needs of the future population.
- Whether staffing levels are appropriate for the offender numbers and types.
- Whether there is adequate housing capacity.
- Costs of operation, including the formula for allocating State/county costs.
- The feasibility of State operation, if recommended by a county.
- Needs and estimates for repairs or renovations.
- Estimated costs to plan, design, and construct new detention centers, if needed.

The Committee must conduct the study in conjunction with the local centers, the Office of State Budget and Management, the Office of State Construction of the Department of Administration, and the Department of Juvenile Justice and Delinquency Prevention. The Committee must report its findings to the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety upon the convening of the 2006 Regular Session of the 2005 General Assembly.

This section became effective July 1, 2005. (HP)

Referrals to Departments, Agencies, Etc.

Study Electronic Payment

S.L. 2005-276, Sec. 14.5 (SB 622, Sec. 14.5) directs the Judicial Department to study the feasibility of implementing electronic and online payment options for court fees and other funds collected by the courts. The study is to address the estimated costs and time frame for

implementing electronic payment as well as any necessary legislative changes. The Judicial Department is required to report its findings to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006. The report is to specifically evaluate the feasibility and cost of requiring all court-ordered payments to be entered into the Department's financial management system and to provide options for ensuring that the data is entered.

This section became effective July 1, 2005. (BC)

Office of Indigent Defense Services Report

S.L. 2005-276, Sec. 14.12 (SB 622, Sec. 14.12) directs the Office of Indigent Defense Services (Office) to report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on the following:

- The volume and cost of cases handled in each district by assigned counsel or public defenders.
- Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program.
- Plans for changes in rules, standards, or regulations in the upcoming year.
- Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services.

The Office is directed to consult with the Conference of District Attorneys, the Conference of District Court Judges, and the Conference of Superior Court Judges in formulating proposals aimed at reducing future costs, including the possibility of decriminalizing minor traffic offenses, changing the way that criminal district court is scheduled, and reevaluating the handling of capital cases. The Office is to include these proposals in its reports during the 2005-2007 fiscal biennium.

This section became effective July 1, 2005. (BC)

Study Wake County Family Court

S.L. 2005-276, Sec. 14.18 (SB 622, Sec. 14.18) directs the Administrative Office of the Courts to study the feasibility of establishing a family court in District Court District 10 (Wake County). The Administrative Office of the Courts is to report the results of its study to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2006.

This section became effective July 1, 2005. (BC)

Juvenile Recidivism Report

S.L. 2005-276, Sec. 14.19 (SB 622, Sec. 14.19) directs the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission (Commission), to conduct biennial recidivism studies of juveniles in North Carolina. Each study is to be based upon a sample of juveniles adjudicated delinquent and must document subsequent involvement in both the juvenile justice system and criminal justice system for at least two years following the sample adjudication. All State agencies are required to provide data as requested by the Commission.

The Commission is directed to report on its progress in developing the biennial juvenile recidivism report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006; the results of the first recidivism

study are to be submitted by May 1, 2007, and future reports must be made by May 1 of each odd-numbered year.

This section became effective July 1, 2005. (BC)

Report on Criminal Record Checks Conducted for Concealed Handgun Permits/Study Fee Adjustment for Criminal Record Checks

S.L. 2005-276, Sec. 15.5 (SB 622, Sec. 15.5) requires the Department of Justice (DOJ) to annually report, by January 15th, to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, on the following: receipts, costs for, and number of criminal record checks performed in connection with applications for concealed weapons permits and information on the number of applications received and approved for firearms safety courses.

The Office of State Budget and Management must study the feasibility of adjusting criminal record check fees charged by the Division of Criminal Information (Division) of the DOJ. The study must include an assessment of the Division's operational, personnel, and overhead costs, and how the costs have changed from the prior fiscal year. The Office of State Budget and Management must report its findings and recommendations to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division on or before March 1, 2006.

This section became effective July 1, 2005. (HP)

Study DNA Testing and Analysis Costs

S.L. 2005-276, Sec. 15.8 (SB 622, Sec. 15.8) requires the Office of State Budget and Management to study costs for analyzing rape kits, including comparing costs performed by public and private labs. The study must also compare the funds required to eliminate backlogs in testing of rape kits, and a survey of other states' sources of funding for DNA testing and lab analysis costs. The Office of State Budget and Management must report its findings and recommendations to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, and the Fiscal Research Division on or before March 1, 2006.

This section became effective July 1, 2005. (HP)

Reports on Certain Programs

S.L. 2005-276, Sec. 16.3 (SB 622, Sec. 16.3) requires the following programs to report by April 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety with the listed information:

- Project Challenge North Carolina, Inc.
  - The source of referrals for juveniles.
  - The types of offenses committed.
  - The amount of time spent in the program.
  - The number of juveniles who successfully complete the program.
  - The number of juveniles who commit additional offenses after completing the program.
  - The program's budget and expenditures, including all funding sources.

- The Juvenile Assessment Center (Center)
  - Information on the number of juveniles served.
  - An evaluation of the effectiveness of juvenile assessment plans.
  - Services provided as a result of juvenile assessment plans.
  - Information on the Center's budget and expenditures, including all funding sources.

The section also requires the Communities in Schools to report, by April 1 of each year, to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Joint Legislative Education Oversight Committee, with the following information:

- The number of children served.
- The number of volunteers used.
- The impact on children who have received services.
- The program's budget and expenditures, including all funding sources.

This section became effective July 1, 2005. (HP)

Annual Evaluation of Community Programs

S.L. 2005-276, Sec. 16.4 (SB 622, Sec. 16.4) requires the Department of Juvenile Justice and Delinquency Prevention (Department) to evaluate the following:

- Eckerd and Camp Woodson wilderness camp programs.
- Teen court programs, including:
  - Statistical information on the number of juveniles served.
  - The number and type of offenses.
  - Referral sources.
  - The number of juveniles who became court involved after participation.
- Boys and Girls Club programs grant fund programs, pursuant to Section 21.10, S.L. 1999-237, including:
  - The expenditure of State appropriations.
  - The operations and effectiveness of the programs.
  - The number of juveniles served under the program.
- Save Our Students programs.
- The Governor's One-on-One programs.
- Multipurpose group homes.
- The Department must consider whether the programs result in a reduction in court involvement and whether they are achieving the goals and objectives of the Juvenile Justice Act, S.L. 1998-202. The Department is required to report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

This section became effective July 1, 2005. (HP)

Study Cost Containment of Inmate Health Care

S.L. 2005-276, Sec. 17.15 (SB 622, Sec. 17.15) requires the Department of Correction (Department) to study and develop new approaches to reducing the cost of inmate medical services. In its study, the Department must consider and report on all of the following:

- Methods to decrease the cost of services charged by external medical providers.
- The feasibility of a negotiated reimbursement rate for medical services that do not exceed the rate paid for the same or similar services under the State Health Plan, Medicaid, or other negotiated reimbursement rates.

- The potential cost savings by contracting with a third-party administrator.
- The Department's progress in trying to renegotiate provider reimbursement rates.
- The Department's progress in reducing inmate medical costs by additional regionalization and consolidation of services and cost cutting efforts.
- The potential benefit of replacing contract staff with permanent Department medical positions.
- The feasibility of partnering with The University of North Carolina Health Care System to provide a managed health care system for inmates.

The Department must consult with the Executive Administrator of the State Health Plan, The University of North Carolina Health Care System, and organizations representing medical providers to control the costs of services for prisoners. If the Department is unable to achieve the total reduction amount of $4.6 million specified in this act for reducing hospital and physician services line items, the Department may use salary and nonsalary funds from other programs to attain these reductions. The Department must report by April 1, 2006, to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on its efforts to achieve the reduction amount. The Department must issue a report detailing its initial study findings to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by April 1, 2006, and present a final report by December 2006 to the General Assembly.

This section became effective July 1, 2005. (BK)

Study Conversion to Minimum Security/Cleveland Correctional Center

S.L. 2005-276, Sec. 17.18 (SB 622, Sec. 17.18) requires the Department of Correction to study the feasibility of converting the Cleveland Correctional Center from a medium custody to a minimum custody facility or operating a medium custody facility with a minimum custody component. The Department must also study the idea of expanding the Cleveland Correctional Center as a medium or minimum custody facility, or some combination of the two. The Department must conduct a cost analysis of expansion options, including the possibility of using inmate labor for construction. The Department must report its findings to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006.

This section became effective July 1, 2005. (BK)

Report on Electronic Monitoring Program/Use of Global Positioning Systems for Sex Offenders

S.L. 2005-276, Sec. 17.19 (SB 622, Sec. 17.19) requires the Department of Correction to report by March 1 of each year to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety on its efforts to increase the use of electronic monitoring of sentenced sex offenders in the community. The Department must also analyze the reasons for the underutilization of the electronic monitoring program and include its findings in the report. The Department of Correction must report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005, on the 2004 pilot program using Global Positioning Systems (GPS) technology to monitor sex offenders

and domestic violence offenders. The Department also must offer recommendations for further implementation of GPS monitoring, including funding options.

This section became effective July 1, 2005. (BK)

Report on Probation and Parole Caseloads

S.L. 2005-276, Sec. 17.20 (SB 622, Sec. 17.20) requires the Department of Correction to report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1 of each year. The content of the report must include caseload averages for probation and parole officers, an analysis of optimal caseloads, and an assessment of the role of surveillance officers. The Department also must conduct a study of probation and parole officer workloads at least biannually. The study must be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate based on the nature of the offenders supervised and the time needed to supervise those offenders. The Department must report the results of the study and recommendations for any adjustments to caseload goals to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by January 1, 2007.

This section became effective July 1, 2005. (BK)

Parole Eligibility Report

S.L. 2005-276, Sec. 17.28 (SB 622, Sec. 17.28) directs the Post Release Supervision and Parole Commission, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, to analyze the amount of time each parole-eligible inmate has served compared to the time served by offenders under Structured Sentencing for comparable crimes. Specifically the Parole Commission must determine if the inmate has served more time than he or she would have served under the maximum sentence allowed by Structured Sentencing. The Parole Commission is directed to report its analysis to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005, and to report by February 1, 2006 regarding the number of parole-eligible inmates reconsidered for parole under this section and the number of parole-eligible inmates actually paroled.

This section became effective July 1, 2005. (TH)

For additional information on all of the above listed reports and studies, see Enacted Legislation in this chapter.

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 8
Criminal Law and Procedure

Brenda Carter (BC), Trina Griffin (TG), Jeff Hudson (JH), Hal Pell (HP),
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Enacted Legislation

Prohibit Removal of Electronic Collars

S.L. 2005-94 (HB 862) amends the law making it unlawful to intentionally remove or destroy an electronic dog collar or other electronic device placed on a dog by its owner. Prior to this act the law applied only to the counties listed in the statute. The act repeals the county listing; consequently, the law will apply statewide. A first conviction for a violation is a Class 3 misdemeanor; a second or subsequent violation is a Class 2 misdemeanor.

This act becomes effective December 1, 2005, and applies to offenses occurring on or after that date. (HP)

Crime to Falsify Highway Inspection Reports

S.L. 2005-96 (HB 664) makes it unlawful (a Class H felony) for any person to falsify, or to direct another person to falsify, a highway construction inspection report or test report that is required by the State Department of Transportation. Previous law specified individuals by employer (either DOT employees, or agents or employees) that could be held criminally responsible for the described acts. The act eliminates the classification of individuals by employer that may be held criminally responsible for filing, or directing the filing, of false reports, and substitutes "any person."

This act becomes effective December 1, 2005, and applies to offenses occurring on or after that date. (HP)

Aggravating Factor/Add Social Worker

S.L. 2005-101 (SB 507) makes it an aggravating factor, for purposes of structured sentencing, if the underlying offense for which a defendant has been convicted was committed against, or proximately caused serious injury to, a social worker. Under structured sentencing in North Carolina, a sentencing court must take the following steps to determine the appropriate sentence for felonies:

- Determine the offense class.
- Determine the prior record level for the defendant.
- Consider aggravating and mitigating factors.
- Select a minimum sentence from the applicable minimum sentence range.
- Determine the maximum sentence.
- Determine the sentence disposition (active, intermediate, or community).

The sentencing grid contains three ranges of punishment for felonies: presumptive, aggravated, and mitigated. To determine the range in which to sentence a defendant, the court must consider any evidence of aggravating and mitigating factors. The aggravating factors are set out in statute. If the court finds that aggravating factors are present and outweigh any mitigating factors, it may depart from the presumptive range of punishment and impose a term of punishment from the aggravated range.

The act adds to the list of aggravating factors that may be considered in sentencing that the offense was committed against, or proximately caused serious injury to, a social worker while the social worker was engaged in his or her official duties or because of the exercise of those duties.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (WGR)

Child Exploitation Prevention Act

S.L. 2005-121 (SB 472) amends the law that makes it an offense to entice, advise, coerce, order, or command a child less than 16 years of age, and at least 3 years younger than the offender, to commit an unlawful sex act. The act does the following:

- Expands the reach of this offense by including any person the perpetrator *believes* to be less than 16 years of age and 3 years younger.
- Adds this crime to the list of sexually violent crimes for which a person must register as a sex offender.
- Increases the level of the offense from a Class I felony to a Class H felony.
- Authorizes the State Bureau of Investigation, at the request of the Governor or the Attorney General, to investigate the solicitation, commission, or attempted commission of a number of sexually related crimes by means of a computer.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (HP)

Sexual Battery/Sex Offender Registry/DNA

S.L. 2005-130 (HB 1209) adds sexual battery (G.S. 14-27.5A) to the list of offenses for which an offender is required to register as a sex offender. The act also adds sexual battery to the list of offenses for which an offender is required to submit a DNA sample upon conviction or a finding of not guilty by reason of insanity.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SS)

Evidence/Speed-Measuring Instruments

S.L. 2005-137 (HB 821) updates and corrects inconsistencies relating to the provisions governing the testing of speed-measuring devices and the required qualifications of the technicians testing those devices.

In order for the results of a speed-measuring device to be admissible into evidence, the instrument must have been calibrated within 12 months of the alleged violation by a certified technician. The technician must possess a General Radiotelephone Operator License from the Federal Communications Commission (FCC) or a Certified Electronics Technician certificate issued by an FCC Commercial Operators License Examination Manager or by a laboratory established by the International Association of Chiefs of Police.

This act became effective October 1, 2005. (SS)

Blakely Decision/Conform State Law

S.L. 2005-145 (HB 822) amends State law so that a jury, not the judge, finds the facts necessary to sentence an offender under the aggravated sentence range and makes other changes to the State sentencing laws. Under prior law, the judge made the determination on aggravating factors, using the preponderance of the evidence standard. The act was designed to

bring North Carolina's sentencing procedures into compliance with the United States Supreme Court's decision in *Blakely v. Washington*. In particular, the act does the following:

- Amends the statutes to add procedural steps for the jury to find aggravating factors.
- Raises the standard of proof for finding aggravating factors from "a preponderance of the evidence" to "beyond a reasonable doubt." The standard for mitigating factors remains a preponderance of the evidence.
- Provides that only the jury may determine if an aggravating factor is present, unless the defendant admits to its existence. The jury may make this determination at the time of trial. If the judge finds that the interests of justice require a separate sentencing proceeding, it may be held after the guilty verdict is returned.
- Allows the defendant to plead guilty to the aggravating factor, but still have a jury trial on the underlying felony. The evidence of the aggravating factor would be excluded from the trial.
- Allows the defendant to plead guilty to the underlying felony, but have a jury trial on the aggravating factor.
- Requires the State to include non-statutory aggravating factors in the indictment or other charging instrument.
- States that statutory aggravating factors do not have to be included in the indictment or other charging instrument but the defendant must receive written notice.
- Requires the State to follow the statutory procedures, including notice to the defendant, if it seeks to establish a prior record level point if the offense was committed:
  - While the offender was on supervised or unsupervised probation, parole, or post-release supervision,
  - While the offender was serving a sentence of imprisonment, or
  - While the offender was on escape from a correctional institution while serving a sentence of imprisonment.

The notice must be given at least 30 days before trial or the entry of a not guilty or no contest plea. The prior record level point for this factor must be found by the jury. The act:

- Provides that the judge finds whether an aggravating factor based upon a prior juvenile adjudication exists.
- Requires the judge to determine whether the State intends to seek a sentence in the aggravated range or the prior record level point before he or she accepts a plea of guilty or no contest.
- Establishes the procedure for the judge to accept the defendant's admission of the existence of one or more aggravating factors or the prior record level point. The judge, in all cases where a defendant admits to the existence of an aggravating factor or a prior record level point, must advise the defendant that he or she has the right to have a jury determine the existence of the aggravating factor or prior record level point and that he or she has the right to prove the existence of any mitigating factors.
- Allows the defendant to admit an aggravating factor or the prior record level point before or after the trial of the underlying felony.

This act became effective June 30, 2005. (HP)

Failure To Return Hired Motor Vehicles

S.L. 2005-182, Secs. 1-3 (HB 1392, Secs. 1-3) create a new Class H felony offense for failure to return a hired or leased truck, automobile, or other motor vehicle valued in excess of $4,000. The act also sets out what constitutes prima facie evidence of the intent to commit the offense. Prima facie evidence is:

- Failure or refusal to return the vehicle after the lease, bailment, or rental agreement has expired within 72 hours after written demand is made; or

- Obtaining lease of a vehicle by presentation of identification, which is false, fictitious, or knowingly not current.

The written demand for return of the vehicle must be made by personal service in accordance with Rule 4(j) of the North Carolina Rules of Civil Procedure, by certified mail, return receipt requested, or by deposit with a designated delivery service. The demand is effective upon hand delivery or delivery by a designated delivery service to the last known address, or three days after deposit in the mail.

These sections become effective December 1, 2005, and apply to offenses committed on or after that date.

Sections 4 and 5 of this act deal with reporting of stolen and recovered vehicles and failure to return hired motor vehicles. For additional information on these sections see **Transportation**. (WGR)

Amend Assault Assistance Animal

S.L. 2005-184 (SB 1058) expands the existing offense of assaulting a law enforcement agency animal or an assistance animal to apply to instances where mental or behavioral harm has been inflicted upon the animal and requires individuals convicted of this offense to make restitution to the owner or agency caring for the animal. It is a criminal offense in North Carolina to assault a law enforcement agency animal or an assistance animal. Prior to enactment of this act, there were three levels of punishment based on the following specific acts committed by a person when the person knows or has reason to know that an animal is a law enforcement animal or an assistance animal:

- It is a Class I felony to willfully cause or attempt to cause serious physical harm to the animal.
- It is a Class 1 misdemeanor to willfully cause or attempt to cause physical harm to the animal.
- It is a Class 2 misdemeanor to taunt, tease, harass, delay, obstruct, or attempt to delay or obstruct the animal in the performance of its duty.

The act expands these offenses to apply to any instance where any kind of harm has been inflicted upon the animal, whether it is physical, mental, or behavioral harm. The act expands the law from being limited to only "physical harm" or "serious physical harm" to the broader "harm" or "serious harm". The term "harm" is defined to include incidents involving mental or behavioral impairment of the animal that impedes or interferes with its duties, and 'serious harm' is defined to include incidents involving harm that requires an animal to be retrained or retired from duty. The act also requires individuals convicted of this offense to make restitution to the owner or agency caring for the animal, setting out a list of seven specific categories of expenses to be included when determining the amount of restitution. Restitution ordered does not affect any civil remedies available.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (WGR)

Motor Vehicle Move-Over Law Changes

S.L. 2005-189 (HB 288). See **Transportation**.

School Bus Safety Act

S.L. 2005-204 (HB 1400). See **Transportation**.

Drug Enforcement Improvement Act

S.L. 2005-207 (SB 748) amends State laws providing the procedures for the interception of wire, oral, or electronic communications by law enforcement agencies to conform with federal law provisions.

The act provides exceptions to the requirement for the specification of the facilities from which, or the place where, the communication is to be intercepted and in some circumstances from the probable cause requirement. In the case of an application for the interception of an **oral communication**, the requirement does not apply if:

- The Attorney General or designee approves the application.
- The application contains a full and complete statement why the specification is not practical.
- The judicial review panel finds that the specification is not practical.

In the case of an application for the interception of a **wire or electronic communication**, the requirement does not apply if:

- The Attorney General or designee approves the application.
- The application identifies the person believed to be committing the offense, and whose communications are to be intercepted, and the applicant makes a showing that the person's actions could have the effect of thwarting interception from a specified facility.
- The judicial review panel finds that the showing has been adequately made.
- The order is limited to the interception only for a reasonable time to presume that the person identified was proximate to the transmission instrument.

The act further provides that:

- In the case of an oral interception where the specific facility has not been designated, the interception cannot begin until the person authorized to intercept the communication has ascertained the place where the interception is to occur.
- In the case of an order authorizing the interception of a wire or electronic communication, the provider of the wire or electronic communication may move for a modification or to quash the order, on the grounds that it cannot assist the interception in a timely or reasonable fashion.

The act amends the current law providing that an order authorizing the interception of communications expires 30 days from the date of the order and that the panel may extend the period for 15 days. The act provides that the 30-day period begins on the earlier of the day the interception begins, or 10 days after the order is entered, and also authorizes an extension of 30 days. The act provides that if the intercepted communication is in code or foreign language, and an expert is not available during the interception period, minimization may be accomplished as soon as practicable. Minimization is the deletion of any communications that are not relevant or pertinent to the basis for the interception. Minimization is normally accomplished by suspending intercept operations during the periods when irrelevant communications are occurring. The interception may be conducted by State or government personnel, or contracted personnel under law enforcement supervision.

This act becomes effective December 1, 2005. (SS)

Construction Site Theft/Aggravate Penalty

S.L. 2005-208 (SB 532) makes it a Class I felony to steal goods valued at between $300 and $1,000 from a permitted construction site. Generally, it is a Class H felony to steal goods valued at more than $1,000 and a Class 1 misdemeanor to steal goods valued at $1,000 or less. The act also makes it a Class I felony to possess or receive stolen goods valued at between $300 and $1,000 with actual knowledge or having reasonable grounds to believe that the goods were stolen from a permitted construction site. Generally, it is a Class H felony to receive or possess

stolen goods valued at more than $1,000 knowing or having reasonable grounds to believe them to be stolen and a Class 1 misdemeanor to receive or possess stolen goods valued at $1,000 or less knowing or having reasonable grounds to believe them to be stolen. A permitted construction site is a site where a permit, license, or other authorization has been issued by the State or a local government for the placement of new construction or improvements to real property.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (JH)

Amend Indecent Exposure Law

S.L. 2005-226 (SB 776) amends the indecent exposure law to apply to indecent exposure to persons of the same sex, except for those places designated for a public purpose where the same sex exposure is incidental to a permitted activity.

The act provides for a Class H felony for any person 18 or older who exposes himself or herself in any public place in the presence of a person less than 16 years of age for the purpose of arousing or gratifying sexual desire. Any person convicted of this felony is required to register as a sex offender.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SS)

Campus Police Act

S.L. 2005-231, Secs. 4-7 and 10 (SB 527, Secs. 4-7 and 10) enact specific portions of the Campus Police Act.

Sections 4 and 5 of this Act add "campus police" to the current law that defines "qualified" law enforcement officers for purposes of the concealed carry permit statutes.

Sections 6.1 and 6.2 make changes to the current assault statutes to provide that assault on a company police officer or campus police officer is a Class A1 misdemeanor.

Sections 7 and 10 make conforming changes to statutes that currently reference company police officer authority under Chapter 74E of the General Statutes to reference the new Chapter 74G created by the remainder of this Act.

These sections became effective July 28, 2005.

Sections 1 through 3, 8, 9, and 12 of this act remove the statutory authority from the Company Police Act to the newly created Campus Police Act. For additional information see **Courts, Justice, and Corrections.**

Section 11 of this act allows campus police officers to tow unlawfully parked vehicles. For additional information see **Transportation.** (SS)

Handgun Permit Renewal/Deployed Military

S.L. 2005-232 (SB 109) provides that a deployed military permittee who holds a concealed handgun permit that will expire during deployment or the permittee's agent can get an extension of the permit from the sheriff by providing the sheriff with proof of deployment. Upon receipt of proof of deployment, the sheriff will extend the permit for a period of 90 days after the deployment ends. The act also provides that even if the permit is not extended and expires during deployment, the permit will remain valid during the deployment and for 90 days after the deployment ends. A military permittee will then have 90 days after the end of deployment to renew the permit. The act defines "military permittee" as a person who holds a concealed handgun permit who is a member of the armed forces of the United States, the armed forces reserves of the United States, the North Carolina Army National Guard, or the North Carolina

National Guard. The act defines "deployed" as military duty that removes a military permittee from the permittee's county of residence.

This act became effective July 28, 2005. (JH)

Break Into Place of Worship

S.L. 2005-235 (SB 972) adds a new statute to the State's criminal laws on breaking or entering. A person that breaks or enters a building that is used for religious worship is guilty of a Class G felony. The person must have the intent to commit a felony or larceny at the time of the breaking or entering, and the building must be clearly identifiable as a place of religious worship. A place of religious worship includes any church, chapel, meetinghouse, synagogue, temple, longhouse, or mosque, or other building that is regularly used for religious worship.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (HP)

Exploitation/Elderly or Disabled Adult

S.L. 2005-272 (HB 1466) expands the offense of exploitation of an elder or disabled adult and increases the penalty for that offense.

The act repeals G.S. 14-32.3(c), the current exploitation offense, and creates a new G.S. 14-112.2, which does the following:

- Prohibits a person who stands in a position of trust and confidence, or a person who has a business relationship with, an elder or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, the elder or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive them of the use, benefit, or possession or to benefit someone other than the elder or disabled adult.
  - Violation of this provision is as follows:
    - A Class F felony for funds, assets, or property valued at $100,000 or more.
    - A Class G felony for funds, assets, or property valued at $20,000 or more but less than $100,000.
    - A Class H felony for funds, assets, or property valued at less than $20,000.
- Prohibits any person who knows or reasonably should know that an elder or disabled adult lacks the capacity to consent, to obtain or use, endeavor to obtain or use, or conspire with another to obtain or use the adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder or disabled adult of the use, benefit, or possession, or to benefit someone other than the elder or disabled adult.
  - Violation of this provision is as follows:
    - A Class G felony for funds, assets, or property valued at $100,000 or more.
    - A Class H felony for funds, assets, or property valued at $20,000 or more but less than $100,000.
    - A Class I felony for funds, assets, or property valued at less than $20,000.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SS)

Payment of Costs Associated with Conditions of Probation

S.L. 2005-276, Sec. 17.29 (SB 622, Sec. 17.29) requires that a defendant not pay costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required by the regular conditions of probation.

This section became effective July 1, 2005. (SS)

Concealing a Death/Criminal Offense

S.L. 2005-288 (HB 926) creates a Class I felony for any person who, with the intent to conceal the death of a person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body. A Class A1 misdemeanor is created for any person who aids, counsels, or abets any other person in concealing the death of a person.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SS)

Death Penalty/Add Aggravating Factor

S.L. 2005-295 (HB 1436) directs the North Carolina Sentencing and Policy Advisory Commission (Commission) to study whether the State's capital sentencing law should include, as an aggravating factor, that the capital felony was committed at a time when the defendant was subject to:

- A valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina.
- A valid protective order entered by the courts of another state.
- A valid protective order entered by the courts of an Indian tribe.

Under North Carolina's capital sentencing laws, a jury determines whether the State has proven any aggravating factors beyond a reasonable doubt. If the defendant proves any mitigating factors by a preponderance of the evidence, the jury must then determine whether the aggravating factors outweigh the mitigating factors in reaching a sentence of death or life without parole. The Commission must report its findings and recommendations to the 2005 General Assembly, not later than May 1, 2006. The report must describe the Commission's deliberations and must include any policy recommendations and proposed legislation.

This act became effective August 22, 2005. (HP)

Pirating Movies

S.L. 2005-301 (HB 687) makes it a criminal offense to:

- Knowingly operate or attempt to operate an audiovisual recording device in a motion picture theater.
- To transmit, record or otherwise make a copy of a motion picture, or any part thereof, without the written consent of the motion picture theater owner.

A first offense is a Class 1 misdemeanor; a second or subsequent offense is a Class I felony. The owner or lessee of a motion picture theater who detains a person, and alerts law enforcement authorities of an alleged violation, is immune from civil liability unless the plaintiff can show by clear and convincing evidence that the measures were manifestly unreasonable.

This offense would not apply to a lawfully authorized investigative, protective, law enforcement, or intelligence gathering employee or agent of a local, State, or federal government operating any audiovisual recoding device in a theater as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

This act becomes effective December 1, 2005, and applies to offenses occurring on or after that date. (HP)

False Report/Destructive Device

S.L. 2005-311 (HB 490) expands the law regarding making a false report of a destructive device to include a report that there is a destructive device in sufficient proximity to cause damage to any building, house, or other structure, or any vehicle, aircraft, vessel, or boat.

Previous law only included reports that the destructive device was actually inside one of these places. Violation of the law is a Class H felony. A second violation within five years is a Class G felony.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SS)

Increase the Penalty for Truancy

S.L. 2005-318 (HB 779). See **Education**.

Pardon/Expunction of Record

S.L. 2005-319 (HB 1328) provides for the expunction of records for anyone who receives a pardon of innocence from the Governor. The act does not limit the number of expunctions possible and does not require any information to be retained at the Administrative Office of the Courts.

This act became effective August 25, 2005. (SS)

Breach Confidential Files/School Board Employees

S.L. 2005-321 (SB 1124) adds penalty provisions to the laws that provide confidentiality for the records of school board employees. The act provides that:

- A public official or employee who knowingly allows any person to have access to confidential information is guilty of a Class 3 misdemeanor and is subject to a fine of not more than $500.
- Any person without authority who examines, removes, or copies a file is guilty of a Class 3 misdemeanor and is subject to a fine of not more than $500.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (HP)

No Lasers Pointed at Planes

S.L. 2005-329 (SB 428) creates a Class H felony for willfully pointing a laser device at an aircraft, while the device is emitting a laser beam, and while the aircraft is taking off, landing, in flight, or otherwise in motion.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SS)

Access to Public Trial Preparation Material

S.L. 2005-332 (SB 856). See **Civil Law and Procedure**.

Search Warrants/Audio and Video Transmission

S.L. 2005-334 (HB 1485) amends the laws relating to the application for a search warrant. Under current law, an affidavit must be presented to the issuing official, and additional information may not be considered unless it is recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official. The act allows the additional information by:

- Affidavit.
- Oral testimony under oath or affirmation.

- Oral testimony under oath or affirmation by a sworn law enforcement officer to the issuing officer by means of a two-way audio and visual transmission. The procedures and equipment used for the two-way transmission must be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts, and must be approved by the Administrative Office of the Courts.

This act became effective October 1, 2005. (HP)

Concealed Carry by Law Enforcement Officers

S.L. 2005-337 (HB 1401) authorizes a civil or law enforcement officer of the United States to carry concealed weapons even when not in the discharge of official duties. Prior to the act, State law authorized a civil or law enforcement officer of the United States to carry concealed weapons only when in the discharge of official duties. The act also authorizes a sworn law enforcement officer to carry concealed weapons off duty provided the officer does not at the same time consume any alcoholic beverages or illegal controlled substances or have any alcohol or illegal controlled substances in the officer's body. Prior to the enactment of the act, a sworn law enforcement officer could carry concealed weapons if the officer's superior had filed written regulations authorizing the carrying of concealed weapons with the clerk of superior court in the county where the law enforcement unit was located and the regulations specifically prohibited the carrying of concealed weapons while the officer was consuming or under the influence of alcoholic beverages.

This act became effective August 26, 2005. (JH)

Probation Stayed/Appeal for Trial De Novo

S.L. 2005-339 (HB 1145) expands the portion of the judgment that is stayed during a new trial to include probation or special probation. Under State law, a defendant convicted before a magistrate may appeal for a new trial before a district court judge and a defendant convicted before a district court judge may appeal for a new trial before a superior court judge with a jury. Prior to S.L. 2005-339, the portion of the judgment relating to fines, penalties, and confinement could be stayed, but not the portion of the judgment relating to probation or special probation.

This act became effective August 26, 2005, and applies to appeals noticed on or after that date. (JH)

Speeding To Elude Arrest

S.L. 2005-341 (HB 1279) increases the penalties for speeding to elude arrest when the offense results in death. Under North Carolina law, it is a Class 1 misdemeanor for a person operating a motor vehicle to flee or attempt to elude a law enforcement officer. It is a Class H felony to commit the offense if two or more of the following aggravating factors are present:

- Speeding in excess of 15 mph over the legal limit.
- Gross impairment of the person's faculties while driving.
- Reckless driving.
- Negligent driving leading to an accident causing property damage in excess of $1,000 or personal injury.
- Driving with a revoked license.
- Driving in excess of the posted speed limit.
- Passing a stopped school bus.
- Driving with a child under 12 years of age in the vehicle.

This act increases the penalties for speeding to elude arrest when the offense results in the death of any person, and the violation is the proximate cause of the death. If a violation

causes death, speeding to elude arrest is a Class H felony, and speeding to elude arrest when aggravating factors are present is a Class E felony.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (WGR)

Domestic Violence Victims Empowerment Act

S.L. 2005-343 (HB 1311) allows domestic violence victims to submit proof of a protective order as evidence of an emergency situation to obtain a temporary permit to carry a concealed handgun. North Carolina law authorizes sheriffs to issue a temporary concealed handgun permit to a person that may last up to 90 days if the sheriff reasonably believes that the applicant is in an emergency situation that may constitute a risk of safety to the person or the person's family or property. In order to be eligible to receive a temporary permit, the applicant must have submitted the application, the permit fee, and a set of fingerprints. It is entirely within the discretion of the sheriff whether to issue the temporary permit.

This act amends the emergency permit procedure set out in the law prior to enactment of this act to specify that, when a victim of domestic violence applies for a temporary concealed handgun permit, the applicant may submit proof of a domestic violence protective order as evidence that he or she is in an emergency situation. It is still within the discretion of the sheriff whether to issue the temporary permit.

The act also provides that when a protective order is filed with the clerk of superior court, the clerk must provide the applicant with an informational sheet that explains the plaintiff's right to apply for a concealed carry permit and requires the Administrative Office of the Courts to develop the standard informational sheet.

This act became effective October 1, 2005, and applies to protective orders issued on or after that date. (WGR)

Reliance on Biometric Identification Systems/ Defense in Sale of Alcohol or Tobacco to Minors

S.L. 2005-350, Sec. 6 (HB 1500, Sec. 6) amends laws concerning the sale of alcohol or tobacco products to minors by permitting the use of biometric identification systems and providing that the use of and reliance on such systems is a defense to a charge of unlawful sale to minors. A biometric identification system generally uses physical features such as the face or a fingerprint to check a person's identity. This section requires a showing that the system demonstrated (1) the purchaser's age to be at least the required age for the purchase and (2) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued by the Division of Motor Vehicles, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the document.

This section became effective September 7, 2005.

Sections 1-5 amend various laws regarding wine and beer permits. For additional information see **Alcoholic Beverage Control.** (BC)

Master Keys/Lock-Picking Devices Regulated

S.L. 2005-352 (HB 891) creates a new criminal offense: preparation to commit breaking or entering into motor vehicles. The act prohibits any person from possessing a motor vehicle master key, manipulative key, or other lock-picking device with the intent to commit any felony, larceny, or unauthorized use of a motor propelled conveyance. Persons are also prohibited from buying, selling, or transferring a motor vehicle master key, manipulative key or device, key-cutting device, lock pick or lock-picking device, or hot wiring device. Violation is a Class I felony.

The act exempts car dealers, car rental agents, locksmiths, a person who is lawfully repossessing a vehicle, or a State, county, or municipal law-enforcement officer acting within the scope of official duties. Also exempt are legitimate businesses with key-cutting devices for the purpose of making duplicate keys for the rightful owner of the vehicle.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (WGR)

Bail Bonds/Bond Source

S.L. 2005-375 (HB 1409) amends the State bail laws to authorize judges to conduct hearings on the source of money or property posted for a secured appearance bond, and refuse the bond if the money or property, based upon its source, will not assure appearance.

This act becomes effective December 1, 2005, and applies to bond hearings on or after that date. (HP)

Identity Theft Protection Act of 2005

S.L. 2005-414 (SB 1048). See **Commercial law and Consumer Protection.**

Clarify Definition Of Child Care

S.L. 2005-416, Sec. 4 (HB 1517, Sec. 4) makes it a criminal offense for babysitting services to be offered or provided by a sex offender or to be located in the home of a sex offender. The act defines "baby sitting service" as providing, for profit, supervision or care for a child under the age of 13 years who is unrelated to the provider by blood, marriage, or adoption, for more than 2 hours per day while the child's parents or guardian are not on the premises. The act prohibits an adult from providing or offering to provide a baby sitting service where:

- The service is located in a home where a registered sex offender resides; or
- The provider of care is a registered sex offender.

A violation that is a first offense is a Class 1 misdemeanor, and a second or subsequent offense is a Class H felony.

This section becomes effective December 1, 2005, and applies to offenses committed on or after that date. (WGR)

Methamphetamine Lab Prevention Act

S.L. 2005-434 (HB 248) places limitations on the sale and delivery of pseudoephedrine (PSE) products to the general public and enacts other measures aimed at curtailing the production of methamphetamine in illicit drug "labs."

- **Storage Restrictions. –**
  - Single-source and multi-source PSE products in the form of tablets or caplets must be stored and sold behind the pharmacy counter.
  - PSE products in the form of liquids, liquid capsules, gel capsules, and pediatric formulations may be sold over the counter, except as to specific products for which the Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) issues an order otherwise.
  - PSE products whose sole active ingredient is PSE in strength of 30 milligrams or more per tablet or caplet must be sold at retail only in blister packages.
- **Posting of Signs**. – Requires a retailer to post a sign notifying the public of purchase limits under State law and records collection for inspection by law enforcement.

- **Training of Employees.** – Requires a retailer to train employees involved in the sale of PSE products in a program conducted or approved by the Commission. This requirement only applies to PSE products in the form of tablets or caplets, and other specific products for which the Commission issues an order subjecting the specific product to requirements under the Article.
- **Age/ID Requirements for Purchase.** – Provides that PSE products in the form of tablets or caplets may be sold at retail without a prescription only to a person at least 18 years of age. A retailer must require a photo identification from every purchaser, and for those purchasers the retailer reasonably believes are under 18, the retailer must require a photo identification containing a date of birth. The name and address, product description, and volume of PSE purchased must be entered into a record of disposition and signed and attested to by the purchaser on a form approved by the Commission. The Commission must construct the form to allow for entry of electronic information, including electronic signature. This requirement only applies to PSE products in the form of tablets or caplets, and other specific products for which the Commission issues an order subjecting the specific product to requirements under the Article.
- **Record-Keeping.** – Requires a retailer to have records readily available for law enforcement within 48 hours of the time of a transaction. Requires that a retailer maintain the record of disposition of transactions for two years from the date of each transaction; that records maintained are not public records but are for the exclusive use of the retailer and law enforcement; and the records may be destroyed after two years. This requirement only applies to PSE products in the form of tablets or caplets, and other specific products for which the Commission issues an order subjecting the specific product to requirements under the Article.
- **Transaction Limits.** – Restricts the amount of PSE products that may be purchased or delivered to two packages in a single over-the-counter retail sale, and three packages per month. This requirement only applies to PSE products in the form of tablets or caplets, and other specific products for which the Commission issues an order subjecting the specific product to requirements under the Article.
- **Penalties.** – Provides penalties for violations of requirements by retailers, employees, and purchasers.
  - Retailer/criminal provisions: if a retailer willfully and knowingly violates restrictions on PSE sales, age/identification requirements, record-keeping requirements, transaction limits, or sign posting, the retailer would be guilty of:
    - Class A1 misdemeanor for the first offense.
    - Class I felony for a second or subsequent offense.
    - Conviction of a third offense occurring at a single establishment would result in prohibition on PSE sales by retailer at that establishment.
  - Employee or purchaser provisions: if an employee or purchaser willfully and knowingly violates record-keeping requirements or transaction limits, he or she would be guilty of:
    - Class 1 misdemeanor for a first offense.
    - Class A1 misdemeanor for a second offense.
    - Class I felony for a third or subsequent offense.
    - The provision is not applicable to bona fide innocent purchasers.
  - Retailer/civil penalty provisions: if a retailer fails to train, supervise, or discipline employees, he or she will incur the following fines:

    - up to $500.00 for the first violation.
    - up to $750.00 for the second violation.
    - up to $1,000 for a third or subsequent violation.
- **Commission Authority to Exempt or Add Products. –** Authorizes the Commission to add or delete specific PSE products from the act's requirements after considering whether or not there is substantial evidence that the specific product would be used to manufacture methamphetamine in the State. Requires the Commission to publish an order adding or deleting a product in the North Carolina Register 60 days in advance of the addition or deletion becoming effective.
- **Civil Immunity. –** Provides retailers or employees who, reasonably and in good faith, report criminal activity involving PSE products to law enforcement, or who refuse to sell PSE to persons reasonably believed to be ineligible to purchase under the law, civil immunity except in cases of willful misconduct. Prohibits retaliation against employees for the making of reports.
- **Preemption of Local Laws. –** Provides that the act preempts local ordinances and regulations on the sale of PSE products.
- **Licensing of Wholesale Distributors. –** Requires wholesale distributors of PSE products to comply with State wholesale prescription drug licensing provisions. The licensing provisions under the act include record-keeping requirements and penalty provisions. The section requires wholesale distributors to electronically submit monthly reports to law enforcement.
- **Aggravated Sentencing Factor. –** Makes it an aggravating factor on sentencing to manufacture methamphetamine in a dwelling that is one of four or more contiguous dwellings.
- **Flea Market, Etc., Sales. –** Prohibits itinerant merchants, peddlers, and specialty market operators and vendors from selling products that contain PSE and from selling certain other products.
- **Bail Provision. –** Provides restrictions concerning bail in cases of methamphetamine manufacture or possession of precursors with intent to manufacture.
- **Study Commission. –** Creates a Legislative Commission on Methamphetamine Abuse, composed of members of government and the public to study:
    - The abuse of methamphetamine precursors used to make methamphetamine.
    - Training programs for employees involved in the retail sale of PSE products.
    - Education programs for citizens of the State on the restrictions on the sale of PSE products under State law.
    - Detection and prevention of clandestine methamphetamine laboratories in the State.
- **SBI Study. –** Directs the State Bureau of Investigation to study issues regarding use of PSE products to make methamphetamine and report annually, beginning on or before November 1, 2006, to the Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services, the Legislative Commission on Methamphetamine Abuse, and the Joint Governmental Operations Subcommittee on Justice and Public Safety.

The criminal and regulatory provisions of this act, including the limitations on storage, sales and delivery, become effective January 15, 2006, and apply to offenses occurring on or after that date. The remainder of the act became effective September 27, 2005. (HP)

Cockfighting/Increase Penalty

S.L. 2005-437 (HB 888) increases the penalty for cockfighting from a Class 2 misdemeanor to a Class I felony. Any person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock, is guilty of the offense.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (HP)

Expunge Multiple Charges/Occur within One Year

S.L. 2005-452 (HB 1213) allows a person, who has been charged with multiple criminal offenses that are all dismissed or have all had findings of not guilty or not responsible, to apply to have each of those charges expunged if the offenses occurred within the same 12-month time period or if the charges are dismissed or findings are entered in the same term of court. The multiple offenses do not have to arise out of the same transaction or occurrence, nor do the multiple offenses have to have been consolidated for judgment.

The court is required to hold a hearing on the application. The court is required to order the expunction if the court finds that the person has not previously obtained any of the following:

- An expunction under this act for multiple offenses.
- Expunctions under G.S. 15A-145 or G.S. 90-96.
- A conviction for any felony under the laws of the United States, this State, or any other.

This act became effective October 1, 2005. (SS)

Driving from/Leaving Scene of Accident

S.L. 2005-460 (HB 217). See **Transportation**.

Rachel's Law

S.L. 2005-461 (SB 486) creates two new offenses related to the discharge of a firearm or certain barreled weapons into property. The first offense would make it a Class D felony to willfully or wantonly discharge a firearm or certain barreled weapons into an occupied dwelling or into any occupied vehicle, aircraft, watercraft, or other conveyance that is in operation. The second offense would make it a Class C felony to willfully or wantonly discharge or attempt to discharge a firearm or certain barreled weapons into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure while it is occupied and the discharge results in serious bodily injury to any person.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (JH)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 9
Education

Dee Atkinson (DA), Drupti Chauhan (DC), Shirley Iorio (SI),
Robin Johnson (RJ), and Sara Kamprath (SK)

Enacted Legislation

Public Schools

Student Asthma Medications

S.L. 2005-22 (HB 496) requires local boards of education to adopt policies that allow students with asthma or students subject to anaphylactic reactions, or both, to possess and self-administer their asthma medication on school property during the school day, during school-sponsored activities or while in transit to and from school or school-sponsored events. "Asthma medication" is defined as "a medicine prescribed for the treatment of asthma or anaphylactic reactions and includes a prescribed asthma inhaler or epinephrine auto-injector." The local board policy must include a requirement that a student's parent or guardian provide the school with all of the following documentation in order for the student to be permitted to possess and self-administer asthma medications:

- Written permission from the student's parent or guardian for the student to possess and self-administer asthma medication.
- A written statement from the student's health care practitioner verifying that the student has asthma or an allergy that could result in an anaphylactic reaction, or both, and that the health care practitioner prescribed medication for use on school property during the school day, during school-sponsored activities or while in transit to and from school or school-sponsored events.
- A written statement from the student's health care practitioner who prescribed the asthma medication that the student understands, has been instructed in self-administration of the asthma medication, and has demonstrated the skill level necessary to use the asthma medication and any device necessary to administer the asthma medication.
- A written treatment plan and emergency protocol formulated by the health care practitioner who prescribed the medicine for managing the student's asthma or anaphylaxis episodes and for medication use by the student.
- A statement provided by the school and signed by the student's parent or guardian acknowledging that the local school administrative unit and its employees and agents are not liable for an injury arising from a student's possession and self-administration of asthma medication.
- Other requirements necessary to comply with State and federal laws.

The act also provides that all of the following requirements must be met:

- The student must demonstrate to the school nurse, or the nurse's designee, the skill level necessary to use the asthma medication and any device necessary to administer the asthma medication.
- The student's parent or guardian must provide to the school backup medication that must be kept at the student's school in a location immediately accessible to the student in case of an emergency.
- Information provided to the school by the student's parent or guardian must be kept on file at the student's school in a location easily accessible in case of an emergency.

- A school may impose disciplinary action on the student if the student uses the medication in a manner other than as prescribed. However, the school may not impose disciplinary action that limits or restricts the student's immediate access to the medication.
- The permission granted for a student to possess and self-administer asthma medication is effective only for the same school and for 365 calendar days and must be renewed annually.
- No local board of education, nor its members, employees, designees, agents, or volunteers, are liable in civil damages to any party for any act authorized by this law, or for any omission relating to that act, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing.

This act recodifies existing statutes related to the special medical needs of students into the new Article 26A of Chapter 115C of the General Statutes, and directs the Department of Health and Human Services, the Department of Public Instruction or other appropriate State agencies to apply for federal grants related to treating, preventing, or training about children's asthma.

This act became effective April 28, 2005, and applies beginning with the 2005-2006 school year. (SI)

Make Up Instructional Days/Hurricanes

S.L. 2005-48 (HB 415) amends the minimum 180 days and 1000 hours required for instruction in the public schools. The act specifies that if a local board of education, due to inclement weather, schedules 1000 hours of instruction on less than 180 days, the local school administrative unit is deemed to have had a minimum of 180 days of instruction, teachers employed for a 10-month term were deemed to have been employed for 180 instructional days, and all other employees were to be compensated as if they had worked their regularly scheduled hours for 180 instructional days.

The act only applies to local school administrative units who meet both of the following criteria:

- Are located in whole or in part in the counties that were declared by the President of the United States to be a disaster area for Hurricane Frances, Hurricane Ivan, or both.
- Have missed more than 13 instructional days during the 2004-2005 school year due to all inclement weather including flooding from Hurricane Frances, Hurricane Ivan, or both.

This act became effective May 17, 2005, and applies only to the 2004-2005 school year. (DC)

Permissible School Bus Routes Modified

S.L. 2005-151 (SB 821) allows public school buses to operate on municipal streets and other streets with publicly dedicated rights-of-way, in addition to State-maintained highways.

This act became effective July 1, 2005. (SK)

Amend Law on Purchase of Preliminary Scholastic Aptitude Tests for Schools

S.L. 2005-154 (HB 403) repeals the requirement that the State Board of Education contract with the College Board for the Preliminary Scholastic Aptitude Tests (PSAT) and the diagnostic materials that accompany the PSAT score reports.

This act became effective July 5, 2005. (RJ)

Repeal Duplicative School Accreditation Requirement

S.L. 2005-155 (HB 404) repeals the requirement that the State Board of Education develop and use a State accreditation program to monitor the implementation of the Basic Education Program. Part of the Basic Education Program, enacted in 1985, required the State Board of Education to establish a basic or minimum curriculum to be provided for all children in kindergarten through 12th grade and to establish minimum competencies, promotion standards, and graduation requirements. However, with the implementation of the ABCs and No Child Left Behind, the need for a separate State accreditation process is no longer necessary. The act also repeals the requirement that local boards of education must meet educational State accreditation standards related to instruction in preventing alcohol and drug use in grades K-12.

This act became effective July 5, 2005. (SK)

Public Comment at Local Board Meetings

S.L. 2005-170 (HB 635). See **Local Government**.

Clarify School Administrator Certification Standards

S.L. 2005-179 (HB 11) allows an individual who has a bachelor's degree from an accredited college or university and education and training that the State Board of Education determines are equivalent to a graduate degree from an approved public school administration program to qualify for certification as a school administrator. The individual would also have to meet all other certification requirements.

This act became effective July 12, 2005. (DC)

Residential Schools Like Other Public Schools

S.L. 2005-195 (SB 630) amends the laws governing the State's educational accountability program (the ABCs Program) as it is implemented in the Schools for the Deaf and the Governor Morehead School. The act amends Part 3A of Article 3 of Chapter 143B of the General Statutes as follows to reflect comparable changes made over time to the laws governing the ABCs Program for the public schools: (1) raises the eligibility criteria for ABCs awards; (2) deletes the option that allows personnel who are eligible for ABCs awards to develop and vote on a plan to spend these funds; (3) eliminates references to categories of school personnel no longer at these schools; (4) authorizes the Superintendent of the Office of Education Services of the Department of Health and Human Services to act as the Secretary's designee in evaluating the schools' principals and in receiving school improvement plans developed by each school; and (5) makes numerous technical changes.

This act became effective July 1, 2005. (RJ)

School Bus Safety Act

S.L. 2005-204 (HB 1400). See **Transportation**.

Placing Students in Seclusion

S.L. 2005-205 (HB 1032), known as the "Deborah Greenblatt Act," defines several terms and clarifies when the use of seclusion and restraint in public schools is reasonable and permissible:

- School personnel are prohibited from physically restraining a student except as reasonably needed in specified circumstances such as obtaining possession of a weapon or other dangerous object, maintaining order, ensuring the safety of the student or another person, preventing the destruction of property, and for self-defense. Physical restraint is not considered a reasonable use of force when used solely as a disciplinary consequence.
- School personnel are prohibited from using mechanical restraint, including tying, taping, or strapping down of a student, except when properly used as included in the student's Individualized Education Plan (IEP) or other applicable plans, when using seat belts or other safety restraints during transportation, as reasonably needed to obtain possession of a weapon or other dangerous object, for self-defense, or to ensure the safety of the student or another person.
- School personnel are prohibited from using seclusion except as reasonably needed in certain circumstances such as when a student's behavior poses a threat to self or others, when properly used as included in the student's IEP or other applicable plans, or to maintain order. Seclusion, however, is not a reasonable use of force when used only as a disciplinary consequence.
- Law enforcement officers are permitted to use force, mechanical restraint, and seclusion in the lawful exercise of their law enforcement duties.
- Isolation is permitted as a behavior management technique provided certain conditions are met, as is time out, as defined in this law.
- The use of aversive procedures, as defined in this law, is prohibited in public schools.

The act requires school personnel to notify the principal of any aversive procedures or prohibited use of restraints or seclusion. The principal must promptly notify the student's parent or guardian and provide the name of the school employee to contact regarding the incident. The parent must be provided with a written incident report no later than 30 days after the incident.

There is a provision in this law to protect against retaliation toward an employee who makes a report alleging a prohibited use of physical or mechanical restraint, aversive procedure, or seclusion unless the employee knew or should have known that the report was false. The act also specifically states that nothing in the law is to be construed to create a private cause of action against any local board of education, its agents or employees, or any institutions of teacher education or their agents or employees or to create a criminal offense.

The act requires local boards of education to do all of the following:

- Provide copies of any policies developed to implement this act to school personnel and parents or guardians at the beginning of each school year.
- Amend their safe school plans by January 1, 2006, to include a component to train appropriate school personnel in the management of disruptive or dangerous student behavior, and a procedure to evaluate the effectiveness of this training.
- Maintain a record of incidents reported under this act and provide this information annually to the State Board of Education.

The act also requires that the approval standards for teacher education programs include demonstrated competencies in the identification and education of children with disabilities, positive management of student behavior, and effective communication techniques for defusing and de-escalating disruptive or dangerous behavior. Beginning with the 2006-2007 school year, the State Board of Education's criteria and procedures for employing lateral entry teachers must include requiring these same competencies as well as the safe and appropriate use of seclusion and restraint.

The act amends the North Carolina State Building Code, by requiring that no State, county, or local building code or regulation prohibit the use of special locking mechanisms for approved seclusion rooms in public schools, provided that the special locking mechanisms meet certain criteria.

This act will become effective July 1, 2006, except as otherwise provided. (SI)

Child Nutrition Standards

S.L. 2005-253 (SB 961) modifies the law governing beverages sold in vending machines during the school day in public schools and sets the following requirements:

- Soft drinks cannot be sold during the breakfast and lunch periods.
- Soft drinks cannot be sold contrary to the requirements of the National School Lunch Program.
- Soft drinks cannot be sold at elementary schools.
- Sugared carbonated soft drinks may not be sold in a middle school.
- Sugared carbonated soft drinks in high school are limited to a maximum of 50% of the offerings.
- Diet carbonated soft drinks are not in the same category as sugared carbonated soft drinks.
- Bottled water products must be available in all schools that have beverage vending.

The act permits schools to adopt stricter policies for beverage vending. The act further provides that by the 2006-2007 school year, no snack vending will be available to students in elementary schools and 75% of the snack vending products available in middle and high schools will have no more than 200 calories per portion or package.

This act became effective August 1, 2005, and applies to contracts for vending services executed or renewed on and after that date. (DC)

Collaboration Among Departments of Administration, Health and Human Services, Juvenile Justice and Delinquency Prevention, and Public Instruction on School-Based Child and Family Team Initiative

S.L. 2005-276, Sec. 6.24 (SB 622, Sec. 6.24). See **Children and Families**.

Civil Penalty and Forfeiture Funds

S.L. 2005-276, Sec. 6.37(g) (SB 622, Sec. 6.37(g)) eliminates the requirement that the Office of State Budget and Management transfer funds accruing to the Civil Penalty and Forfeiture Fund (Fund) to the State School Technology Fund and distributing them to the counties for allocation to the public schools.

The section provides that the General Assembly must appropriate monies in the Fund to the State Public School Fund in the Current Appropriations Act. The State Board of Education must allot the monies to local school administrative units on a per pupil basis according to the allotted average daily membership of each local school administrative unit as determined by and certified to the local school administrative units and the board of county commissioners by the State Board of Education.

This section became effective July 1, 2005.

Subsections (a) through (f) and (h) through (w) of this section make other changes concerning civil penalty and forfeiture funds. For additional information, see **Finance.** (DC)

Flexibility for the Highest Priority Elementary Schools

S.L. 2005-276, Sec. 7.10 (SB 622, Sec. 7.10) permits the State Board of Education to allow high priority schools that have made high growth for three consecutive years to be removed from the list of high priority schools. If a local board of education chooses to have a

school removed from the list of high priority schools, the additional high priority funding for that school will be discontinued.

This section became effective July 1, 2005. (SI)

Replacement School Bus Funds

S.L. 2005-276, Sec. 7.17 (SB 622, Sec. 7.17) provides that the State Board of Education (SBE) may impose any of the following conditions on allotments to local boards of education for replacement school buses:

- The local board of education must use the funds only to make the first, second, or third year's payment on a financing contract.
- The term of a financing contract may not exceed three years.
- The local boards of education must purchase the buses only from vendors selected by the SBE and on terms approved by the SBE.
- The Department of Administration, Division of Purchase and Contract, in cooperation with the SBE, must solicit bids for the direct purchase of school buses and activity buses and must establish a statewide term contract for use by the SBE. Local boards of education are eligible to purchase from the statewide term contract. The SBE must also solicit bids for the financing of school buses.
- A bus financed under this section must meet all federal motor vehicle safety regulations for school buses.
- Any other condition that the SBE deems appropriate.

The section also provides that any term contract for the purchase or lease purchase of school buses or school activity buses cannot require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service.

This section became effective July 1, 2005. (DC)

Expenditures for Driving Eligibility Certificates

S.L. 2005-276, Sec. 7.18 (SB 622, Sec. 7.18) allows the State Board of Education to use funds appropriated for drivers education to cover the costs of driving eligibility certificates.

This section became effective July 1, 2005. (SI)

Mentor Teacher Funds May Be Used for Full-Time Mentors

S.L. 2005-276, Sec. 7.21 (SB 622, Sec. 7.21) directs the State Board of Education (State Board) to grant flexibility to local boards of education (local boards) on their use of funds allotted for mentor teachers. Local boards must first submit to the State Board for its approval a detailed plan on how these funds will be used. The funds must be used to provide mentoring support to all State-funded newly certified teachers, second-year teachers who were assigned mentors the previous year, and entry-level instructional support personnel who have not been teachers. Each local board with an approved plan must report to the State Board on the impact of its mentoring program on teacher retention. The State Board must evaluate a representative sample of mentor programs, analyze the reports from the local boards, and report the results to the Joint Legislative Education Oversight Committee and the Fiscal Research Division of the General Assembly by December 15, 2006.

This section became effective July 1, 2005. (RJ)

Visiting International Exchange Teachers

S.L. 2005-276, Sec. 7.22 (SB 622, Sec. 7.22) adds the following new limitation on budget flexibility for local boards to transfer and approve transfers of funds between funding allotment

categories. Positions allocated for classroom teachers may be converted to the dollar equivalent of the statewide average classroom teacher salary, including benefits, to contract for visiting international exchange teachers. The converted funds must be used to cover the costs associated with bringing these teachers to a local school administrative unit through a State-approved visiting international exchange teacher program and for supporting these teachers. The Visiting International Faculty Program is a State-approved visiting international exchange teacher program.

This section became effective July 1, 2005. (SK)

Local Education Agency Sales Tax Refund Reporting

S.L. 2005-276, Sec. 7.27 (SB 622, Sec. 7.27). See **Finance**.

Review of Standards for Masters in School Administration Programs

S.L. 2005-276, Sec. 7.28 (SB 622, Sec. 7.28) directs the State Board of Education, in consultation with the Board of Governors of The University of North Carolina, to review standards for Masters in School Administration programs to ensure that appropriate competencies related to teacher retention, teacher evaluation, teacher support programs, and teacher effectiveness are included and emphasized.

This section became effective July 1, 2005. (DC)

Evaluation of School Principals

S.L. 2005-276, Sec. 7.29 (SB 622, Sec. 7.29) requires either the superintendent or the superintendent's designee of each local school administrative unit to evaluate all principals and assistant principals at least once each year.

The State Board of Education must revise its evaluation instruments to ensure that the standards and criteria for the evaluations include the accountability measures of teacher retention, teacher support, and school climate. A local board must use the performance standards and criteria adopted by the State Board unless the local board develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board.

This section became effective July 1, 2005. (SI)

Flexibility for High School Innovation

S.L. 2005-276, Sec. 7.33 (SB 622, Sec. 7.33) amends the language in the statutes that provides for cooperative innovative high school programs to allow the constituent institutions of The University of North Carolina and private colleges in North Carolina to have a more active role in establishing these programs. The section authorizes local boards of education to jointly establish with one or more boards of trustees of a constituent institution or private college cooperative innovative programs for high school students. The section clarifies that high school students in accelerated learning programs may earn up to two years of college credit.

The section also provides that three cooperative innovative high school programs are to be established that emphasize the educational development of high school students in the areas of science and mathematics in a nonresidential setting. The eastern, central, and western regions of the State must each have one of these programs.

The State Board of Education is directed to begin planning for the design and implementation of these programs and is to report the plan to the Joint Legislative Education

Oversight Committee and the Fiscal Research Division of the General Assembly by March 15, 2006. The plan must include the following aspects of the proposed programs:

- Programmatic design including location, curriculum, student access, and calendar.
- Projected costs of operation.
- Any plans for coordination with institutes of higher education.
- Proposed implementation schedule.

This section became effective July 1, 2005. (DC)

Minimize Time Devoted to Standardized Tests

S.L. 2005-276, Sec. 7.37 (SB 622, Sec. 7.37) directs the State Board of Education to include in their policies and guidelines for minimizing the time students spend taking tests, including field tests, all of the following:

- Schools must not devote more than two days of instructional time per year taking practice tests that do not have the primary purpose of assessing current student learning.
- Students in a school must not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams.
- No school must participate in more than two field tests at any one grade-level during a school year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.

This section became effective July 1, 2005. (SI)

Plan and Funding for a Virtual High School

S.L. 2005-276, Sec. 7.41 (SB 622, Sec. 7.41) directs the State Board of Education, the Board of Governors of The University of North Carolina, the Independent Colleges and Universities, and the State Board of Community Colleges to develop E-learning standards and plans for infrastructures that provide virtual learning opportunities through all North Carolina schools, universities, and community colleges. The State Board of Education must focus first on high schools and then, where appropriate, E-learning for middle schools, junior high schools, and elementary schools.

The State Board of Education must establish and implement a pilot virtual high school during the 2005-2006 school year and the 2006-2007 school year. The State Board of Education must include instruction in personal financial literacy, including consumer financial education, personal finance and personal credit as part of the pilot program. If the pilot program is successful, it is the intent of the General Assembly to provide funding to implement a virtual high school on a statewide basis for the 2006-2007 fiscal year.

This section became effective July 1, 2005. (SK)

Assistance with School Technology Needs

S.L. 2005-276, Sec. 7.43 (SB 622, Sec. 7.43) provides that the State school technology plan must include at least a baseline template for the following:

- Technology and service application infrastructure, including broadband connectivity, personnel recommendations, and other resources needed to operate effectively from the classroom desktop to local, regional, and State networks; and
- An evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems.

The Department of Public Instruction (DPI) must do all of the following:

- Hold, no later than October 31, 2005, regional workshops for local school administrative units (LEAs) to provide guidance in developing local school system technology plans that meet the criteria established in the State school technology plan.
- Randomly check local school system technology plans to ensure that the LEAs are implementing their plans as approved, and report to the State Board of Education and the State Chief Information Officer on which LEAs are not complying with their plans. The report must include the reasons these LEAs are out of compliance and a recommended plan of action to support each of the LEAs in carrying out their plans.
- Ensure that at least one full-time coordinator is assigned the responsibility of assisting LEAs with E-rate applications. The DPI must do this within existing funds and must notify LEAs about the available assistance.
- Provide the State Board of Education with an annual report on E-rate, including funding, commitments, and enrollment by LEAs. E-rate is the mechanism to provide discount rates to support universal telecommunications services for use by schools and libraries as provided in section 254 of the federal Telecommunications Act of 1996.

The State Board of Education must determine the total amount of funds needed for the recurring total cost of ownership to implement, maintain, and upgrade technology infrastructures and instructional technology so that a three- to five-year budget plan can be developed for the General Assembly. The State Board must also study and identify the types of resources needed to operate schools designed to meet the needs of future learners and report the results of the study to the 2006 Regular Session of the 2005 General Assembly.

This section became effective July 1, 2005, except as otherwise provided. (SI)

Redirect Refundable Sales to State Public School Fund

S.L. 2005-276, Sec. 7.51 (SB 622, Sec. 7.51). See **Finance**.

Small Specialty High Schools Pilot Program

S.L. 2005-276, Sec. 7.52 (SB 622, Sec. 7.52) provides for the creation of 11 small specialty high schools within existing schools. The purpose of the pilot program is to improve graduation rates and to achieve higher student performance. The State Board of Education must work with the Education Cabinet and the New Schools Project in administering the program.

The State Board of Education must evaluate the success of students in the program by such measures as high school retention rates, high school completion rates, high school dropout rates, certification and associate degree completion, admission to four-year institutions, post graduation employment, and employer satisfaction with graduates. The State Board must also measure how funds and personnel resources were used and their impact on student achievement, retention, and employability. The State Board of Education must report the results of the evaluation to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006.

This section became effective July 1, 2005. (SK)

Ensure Department of Health and Human Services Schools Receive Federal Funds

S.L. 2005-276, Sec. 7.54 (SB 622, Sec. 7.54) clarifies that for the purposes of eligibility for federal grant funds, the Department of Health and Human Services is a public authority, which is the school administrative agency for the schools that it operates, and therefore will be

considered as such by State school authorities in the administration and distribution of federal grant funds.

This section became effective July 1, 2005. (DC)

Review of Internal Controls

S.L. 2005-276, Sec. 7.58 (SB 622, Sec. 7.58) establishes a procedure to be followed by the State Board of Education and local school administrative units when incidents of fraud, embezzlement, theft, or management failures are identified. If the firm that conducts the annual audit uncovers these incidents, the local board must submit to the State Board of Education and the Local Government Commission, for their approval, the audit and a plan for corrective action to be taken before the next annual audit. If the incidents are not found by the firm that conducts the annual audit, then the State Board of Education and Local Government Commission must employ, at the expense of the local school administrative unit, an audit firm to review the internal control procedures of that local school administrative unit. This firm must report its findings publicly to the State Board of Education, the Local Government Commission, and the local board of education. If the State Board of Education determines significant changes are needed, the local board must submit to the State Board of Education and the Local Government Commission, for their approval, a plan of corrective action to be taken before the next annual audit.

This section became effective July 1, 2005. (RJ)

Teach Financial Literacy in Public Schools

S.L. 2005-276, Sec. 7.59 (SB 622, Sec. 7.59) requires that public schools provide instruction in personal financial literacy for all students during high school. The State Board of Education must determine the components of financial literacy to be covered and determine in which course the new curriculum must be integrated. The State Board of Education has up to two years to develop and integrate the curriculum into the standard course of study. The State Board of Education must report to the Joint Legislative Education Oversight Committee before implementation of the proposed curriculum.

This section became effective July 1, 2005. (SK)

Comprehensive Treatment Services Program

S.L. 2005-276, Sec. 10.25 (SB 622, Sec. 10.25). See **Health and Human Services**.

Department of Health and Human Services and Community Colleges Study Use of Medication Aides to Perform Technical Aspects of Medication Administration

S.L. 2005-276, Sec. 10.40D(f) (SB 622, Sec. 10.40D(f)) authorizes local boards of education to adopt policies and procedures to use unlicensed health care personnel to perform the technical aspects of administering medication to students. A local board must already have authorized specific school personnel to administer medication under G.S. 115C-307(c). If a board opts to adopt a policy under Section 10.40D(f), the policy must be consistent with the requirements of the Nursing Practice Act. The policy also must provide for training and competency evaluation of medication aides, requirements for listing under the Medication Aide Registry, and requirements for the supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel.

This section became effective July 1, 2005.

For additional information on this section, see **Health and Human Services**. (RJ)

Governor's Vision Care Program Established

S.L. 2005-276, Sec. 10.59F (SB 622, Sec. 10.59F). See **Health and Human Services**.

More At Four

S.L. 2005-276, Sec. 10.67 (SB 622, Sec. 10.67). See **Children and Families**.

Office of School Readiness

S.L. 2005-276, Sec. 10.68 (SB 622, Sec. 10.68). See **Children and Families**.

Conform Retiree Return to Teaching Benefit to IRS Guidelines/Clarify Definition of Retirement

S.L. 2005-276, Sec. 29.28 (SB 622, Sec. 29.28). See **Retirement**.

Help Teacher Assistants Become Teachers

S.L. 2005-302 (HB 1414) directs the State Board of Education to adopt a program to facilitate the process by which teacher assistants may become teachers. The act requires that teacher assistants who participate in the program must be employed in a North Carolina public school and must be enrolled in an approved teacher education program in a North Carolina institution of higher education.

Local school administrative units (LEAs) are encouraged to assign teacher assistants to a different classroom to perform their student teaching from the classroom where they are employed as a teacher assistant. To the extent possible, the LEA may assign a teacher assistant to another school within the same LEA to perform their student teaching. The act gives LEAs discretion to continue providing teacher assistants with their salary and benefits while they student teach in the same local school administrative unit in which they are employed as a teacher assistant.

The State Board of Education is directed to consult with The University of North Carolina Board of Governors and the North Carolina Independent Colleges and Universities in the development of the program. The program must begin with the 2005-2006 academic year.

This act became effective August 22, 2005. (DC)

Increase the Penalty for Truancy

S.L. 2005-318 (HB 779) raises the penalty for failing to comply with the compulsory attendance law (G.S. 115C-378) from a Class 3 misdemeanor to a Class 1 misdemeanor.

The punishment for a Class 3 misdemeanor ranges from 1-10 days of community punishment to 1-20 days of community, intermediate, or active punishment. The court may impose a fine of not more than $200. Punishment for a Class 1 misdemeanor ranges from 1-45 days of community punishment (for someone with no prior convictions) to 1-120 days of community punishment, intermediate punishment, or active punishment (for someone with 5 or more prior convictions). Fines may be imposed with any disposition. For a Class 1 misdemeanor, the amount of the fine is in the discretion of the court.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SI)

Breach Confidentiality Files/School Board Employees

S.L. 2005-321 (SB 1124). See **Criminal Law and Procedure**.

North Carolina State Lottery Act

S.L. 2005-344 (HB 1023). See **State Government**.

Insurance for School Social Workers

S.L. 2005-355 (HB 1491) allows local boards of education to require a school social worker to transport students so long as this requirement is part of a written job description or local board policy. The act also allows a local board to require a school social worker that is required to transport students to increase the liability limits or add a business-use rider, or both, on the employee's personal automobile liability insurance policy. If the board imposes this requirement, the board must reimburse the employee for any additional premium charged as a result.

This act became effective October 1, 2005. (SI)

2005 Military Support Act

S.L. 2005-445, Parts III, VI, VII, and VIII (SB 1117, Parts III, VI, VII, and VIII). See **Higher Education** subheading in this chapter.

Alternative Learning Programs/School Proposals

S.L. 2005-446 (HB 1076) directs the State Board of Education (State Board) to adopt standards, instead of policies and guidelines, for alternative learning programs (ALPs) and alternative schools. Local boards of education must comply with these standards for any new ALP or school to be implemented beginning with the 2006-2007 school year. Local boards are encouraged to apply the standards to ALPs and schools implemented before that time.

Before a local board of education can establish any ALP or school, it must develop a proposal to be submitted to the State Board for its review. The proposal must include: (1) the educational and behavioral goals for students assigned to the ALP or school, (2) policies based on the State Board's new standards, including policies for assigning students, (3) strategies to improve student achievement and behavior, (4) documentation of the success of similar programs and schools, (5) the estimated actual cost of the ALP or school, and (6) documentation of community and school support for the ALP or school. To the extent practicable, the estimated cost must include the cost of (1) staffing with certified teachers who have at least four years' teaching experience and above standard evaluations, (2) providing optimum learning environments and resources, (3) providing support personnel, (4) maintaining safe and orderly learning environments, (5) high quality professional development, and (6) providing transition support for students entering and exiting the ALP or school. The State Board must review the proposal expeditiously and may offer recommended modifications that the local board must consider before it establishes the ALP or school.

The act also requires the State Board to submit to the Joint Legislative Education Oversight Committee a copy of the proposal for a success center, or other ALP or school, from the New Hanover school board and any recommendations from the State Board.

This act became effective September 29, 2005, applies at that time to New Hanover County, and applies to ALPs and alternative schools to be implemented in other school systems beginning with the 2006-2007 school year. (RJ)

Child Nutrition Standards

S.L. 2005-457 (HB 855) directs the State Board of Education (State Board) to establish nutrition standards that will gradually increase the amount of fruits, vegetables, and whole grain products in the items available for school meals and the After School Snack Program, and in a la carte foods and beverages. The State Board must pilot the nutrition standards in eight elementary schools, eight middle schools, and eight high schools before statewide introduction. The nutrition standards must be implemented first in the elementary schools followed by the middle schools and then high schools. The child nutrition programs of participating schools will be held financially harmless during the pilots. The Child Nutrition Services Section of the Department of Public Instruction will be responsible for modifying the nutrition standards and for monitoring the progress of the local school administrative units in meeting the standards. The Child Nutrition Services Section must make an annual report to the State Board and the Joint Legislative Education Oversight Committee on the progress of each local school administrative unit in implementing the nutrition standards.

This act became effective October 1, 2005. (SK)

Streamline School Testing Program

S.L. 2005-458 (HB 911) repeals two provisions, G.S. 115C-12(9a) Power to Develop Content Standards and G.S. 115C-12(9b) Power to Develop Exit Exams, and creates a new G.S. 115C-12(9c), Power to Develop Content Standards and Exit Standards. This new statute, which merges much of the language of the two repealed laws, eliminates the requirement that the State Board of Education (SBE) develop a plan to implement high school exit exams, student proficiency benchmarks, and end-of-course tests for each of the minimum courses required for admission to a University of North Carolina (UNC) constituent institution.

The act requires the SBE to develop academic content standards. Content standards for high school courses must include the knowledge and skills necessary to pursue further postsecondary education or to attain employment in the 21st century economy. High school content standards also must be aligned with the minimum undergraduate course requirements for admission to a UNC constituent institution. The SBE is to work in collaboration with the Board of Governors of The University of North Carolina to ensure that teachers and school administrator degree programs, ongoing professional development, and other university activity in the State's public schools align with the SBE's priorities.

The act authorizes the SBE, as part of its system of annual testing for grades 3 through 12, to develop and implement a plan for end-of-course tests in high school that are aligned with the high school content standards that the SBE develops.

This act became effective October 2, 2005. (DC)

Higher Education

Need-Based Nursing Scholarships

S.L. 2005-40 (HB 780) amends the need-based nursing scholarship loan program so that the State Education Assistance Authority administers the program in the same manner as other need-based scholarships. The State Education Assistance Authority must adopt rules for selecting candidates to receive the scholarship loans and for otherwise administering the program. Distribution of scholarship loan funds to students enrolled in the community colleges, constituent institutions, and private colleges must be proportional to the amounts awarded to the same category of students in the previous fiscal year.

This act becomes effective January 1, 2006, and applies to scholarship loans awarded after that date. (RJ)

Campus Police Act

S.L. 2005-231 (SB 527). See **Courts, Justice and Corrections**; **Criminal Law and Procedures**; and **Transportation**.

Flexibility for High School Innovation

S.L. 2005-276, Sec. 7.33 (SB 622, Sec. 7.33). See **Public Schools** subheading in this chapter.

Plan and Funding for a Virtual High School

S.L. 2005-276, Sec. 7.41 (SB 622, Sec. 7.41). See **Public Schools** subheading in this chapter.

Transfer Prospective Teacher Scholarship Loan and Teacher Assistant Scholarship Loan to the North Carolina State Education Assistance Authority

S.L. 2005-276, Sec. 9.17 (SB 622, Sec. 9.17) authorizes a Type I transfer of the Scholarship Loan Fund for Prospective Teachers from the Department of Public Instruction to the State Education Assistance Authority (SEAA). Section 9.17 repeals G.S. 115C-469, 115C-470, and 115C-472.1, and clarifies, rewrites, and recodifies G.S. 115C-468 and 115C-471 as G.S. 116-209.33 and 116-209.34, respectively. Section 9.17 makes the following changes: (1) directs the SEAA, in consultation with the State Board of Education, to establish criteria for awarding scholarship loans to qualified individuals who pursue college degrees to become teachers; (2) expands this criteria to include the geographic or instructional subject areas in which the demand for teachers is the highest, consideration of minority applicants and applicants from diverse socioeconomic backgrounds, and consideration of the applicant's demonstrated commitment to teaching; (3) authorizes the SEAA to earmark up to 20% of the available funds for awards to the Teacher Assistant Scholarship Fund established in G.S. 116-209.35; (4) increases the scholarship loans to no more than $4,000 per academic year for 4 years; and (5) directs the SEAA, in consultation with the State Board of Education, to adopt rules to implement these changes. The loans will be forgiven if, within seven years after graduation, the recipient teaches for four years or three consecutive years in a North Carolina public school or at a school operated by the United States government in the State. The SEAA also may forgive or reduce any loan payment, if it considers extenuating circumstances would make teaching or repayment impossible.

This section becomes effective January 1, 2006, and applies to scholarship loans awarded on or after that date. (RJ)

Enhance Nutrition in University and Community College Food Programs

S.L. 2005-276, Sec. 9.28 (SB 622, Sec. 9.28) directs the Board of Governors of The University of North Carolina and the State Board of Community Colleges to adopt policies that prohibit the use of cooking oils that contain trans-fatty acids or the sale of processed foods

containing trans-fatty acids under the food programs operated by the constituent institutions or community colleges.

This section became effective July 1, 2005. Policies adopted under this section must be implemented by August 1, 2005, and apply to contracts entered into or renewed on or after that date. (RJ)

Waive Tuition for a Person of a Certain Age who is or was a Ward of the State and who Attends Classes at any Constituent Institution of The University Of North Carolina or Any Community College

S.L. 2005-276, Sec. 9.30 (SB 622, Sec. 9.30) provides that any child attending a constituent institution of The University of North Carolina or a community college must receive a tuition waiver to the extent that there is any tuition payable after the student receives financial aid if the child is:

- At least 17 years old but less than 23 years old.
- Is a ward of the State or was a ward of the State upon turning 18.
- Is a resident of the State.
- Is eligible for services under the Chaffee Education and Training Vouchers Program.

Officials may require proof to verify that a person applying to an institution is eligible for the benefits.

This section became effective July 1, 2005. (SK)

In-State Tuition for Armed Services Members Receiving Honorable Discharges

S.L. 2005-345, Sec. 14 (HB 320, Sec. 14) amends S.L. 2005-276 (SB 622) by modifying the statutory provision on tuition of active duty personnel in the armed services. If an active duty member of the armed services receives an Honorable Discharge from military service, the member continues to be eligible for the in-State tuition rate and applicable mandatory fees so long as the member establishes residency in North Carolina within 30 days after the discharge and is continuously enrolled in the degree or program in which the member was enrolled at the time the member is discharged.

The dependent relative of an active duty member of the armed services who received an Honorable Discharge is also eligible for the in-State tuition rate and applicable mandatory fees if the dependent relative establishes residency within North Carolina within 30 days after the discharge and is continuously enrolled in the degree or program in which the dependent relative was enrolled at the time the member was discharged.

This section became effective July 1, 2005. (DC)

North Carolina National Guard-Tuition Assistance Program Changes

S.L. 2005-444 (SB 725). See **Military, Veterans', and Indian Affairs**.

2005 Military Support Act

S.L. 2005-445, Parts III, VI, VII, and VIII (SB 1117, Parts III, VI, VII, and VIII) expand educational opportunities for members of the military and their children.

Part III of the act authorizes the State Board of Community Colleges to adopt rules to permit funds appropriated for the New and Expanding Industry Training Program and the Focused Industrial Training Program to be used to support training projects for the United States military.

Part VI of the act directs the State Board of Education to review and revise policies and practices concerning credit for high school courses, particularly so that the highly mobile children of military personnel receive credit for courses taken out of State. The State Board must report to the Joint Legislative Education Oversight Committee by December 15, 2005, on its review and policy revisions.

Part VII of the act allows retired, but previously active duty, armed services personnel and their dependents to continue to be eligible for in-State tuition if they continue to be enrolled in a degree or other program at a State university or community college. The person applying for this benefit must prove entitlement to the benefit.

Part VIII of the act allows certain students to be eligible to be considered for admission to the North Carolina School of Science and Mathematics. To be eligible, a student must live with his or her parent who, at the time the application for admission is submitted, is living in the State incident to active duty as a member of (1) the United States Air Force, Army, Coast Guard, Marine Corps, or Navy, (2) the State's National Guard, or (3) a Reserve Component of the foregoing.

This act became effective September 28, 2005. Part VIII of this act applies beginning with the 2005-2006 academic year. (RJ)

Community Colleges

Western Piedmont Community College/Umstead Act

S.L. 2005-63 (SB 510) authorizes Western Piedmont Community College, with the consent of its board of trustees, to use its personnel and facilities to support economic development of its East Campus and companion facilities as an event venue.

This act became effective May 26, 2005. (DC)

Community College/Lead Agency for Job Training

S.L. 2005-77 (HB 583) designates the Community Colleges System Office as the lead agency for delivering workforce development training, adult literacy training, and adult education programs. Generally, students under the age of 16 are not allowed to enroll in a community college. This act also revived and amended the procedure that was enacted in 2001 for allowing intellectually gifted students under the age of 16 to enroll in a community college. That act had expired in 2004. The new procedure for enrolling students under the age of 16 expires on September 1, 2008.

This act became effective June 7, 2005. (SK)

Transfer Textile Center to Gaston College

S.L. 2005-103 (SB 988) transfers the North Carolina Center for Applied Textile Technology (Center) from the Community Colleges System Office to Gaston College. This act repeals the current law governing the Center, Article 6 of G.S. 115D, and creates Article 5A of G.S. 115D, the North Carolina Center for Applied Textile Technology at Gaston College. The new Article 5A sets out the purposes of the Center, establishes a 14-member Advisory Board, sets out the procedure for the President of Gaston College to appoint an individual to serve as the director of the Center, and then for the director to select other staff members of the Center, and provides

that all fees collected by the Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, be retained by the Center and used for the operation of the Center. The Textile Center becomes a part of Gaston College just as the Hosiery Technology Center is a part of Catawba Valley Community College. The Director of the Center will serve as an ex officio, nonvoting member of the Advisory Board to the Hosiery Technology Center at Catawba Valley Community College.

This act became effective July 1, 2005. (SI)

Facilitate Community College Learn and Earn Program

S.L. 2005-193 (SB 566) clarifies that students in early college and middle college high school programs are included in the tuition waiver for high school students. Currently, community colleges waive tuition for courses taken by high school students at community colleges when cooperative programs are established between a community college and a local board of education.

This act became effective July 1, 2005. (SI)

Community Colleges May Train Lateral Entry Teachers

S.L. 2005-198 (HB 563) authorizes the State Board of Community Colleges (SBCC) to offer a program of study that enables lateral entry teachers to take many of their required courses for a teaching certificate at a community college. The State Board of Education (SBE) must set the standards for the program and must work with the SBCC to establish it. The SBCC must implement the program by May 1, 2006.

The act directs the two Boards to identify jointly the community college courses and teacher education program courses necessary and appropriate to include in this program. To the extent possible, colleges and universities must offer these courses through an approved teacher education program and teach them on a community college campus or through distance learning. To be eligible to begin participating in this program of study, an individual must hold a lateral entry teaching certificate, be employed by a local school administrative unit, and have at least a bachelor's degree relevant to the individual's teaching area that was earned at least five years earlier. The individual can be recommended for a State teaching certificate when he or she successfully completes this program and meets any other certification requirements set by the SBE. The two Boards must report annually to the Joint Legislative Education Oversight Committee on this lateral entry program. The final report, due no later than April 1, 2011, must include recommendations as to whether this program should be continued, and if so, the reasons for its continuation and any recommended legislative changes needed to enhance the program.

S.L. 2005-198 also reduces from five years to three years the length of time during which a provisional teaching certificate is valid.

This act became effective July 19, 2005, and except for the changes to the length of time for a valid provisional teaching certificate, expires July 1, 2011. (RJ)

Amend Umstead Act/Community College Facilities

S.L. 2005-247 (SB 565) authorizes a community college to permit the use of its facilities by private business enterprises that have loaned or donated instructional equipment to the college. The private business enterprises would be able to use the facilities to demonstrate the loaned or donated instructional equipment to its potential customers. The board of trustees of the community college would be required to adopt policies on the use of the facilities.

The act directs the State Board of Community Colleges to report to the Joint Legislative Education Oversight Committee annually on October 1 on the use of community college facilities by private businesses.

This act became effective August 4, 2005. (DC)

Workforce Development Programs

S.L. 2005-276, Sec. 8.4 (SB 622, Sec. 8.4) amends Chapter 115D of the General Statutes by adding a new G.S. 115D-5.1 entitled "Workforce Development Programs." Several sections of G.S. 115D-5 pertain to workforce development and are recodified in this new section as G.S. 115D-5.1(a), (b), and (c).

This provision creates within the North Carolina Community College System the Customized Industry Training (CIT) Program to provide programs and training services to assist existing business and industry to remain productive, profitable, and within the State. To qualify to receive assistance under the CIT Program, the President of the North Carolina Community College System must determine that:

- The business is making an appreciable capital investment.
- The business is deploying new technology.
- The skills of the workers will be enhanced by the assistance.

The State Board of Community Colleges must report annually to the Joint Legislative Education Oversight Committee on funds received under the CIT Program, the number of people trained, and the number of years a company has been funded.

The State Board of Community Colleges may use funds appropriated to it for the New and Expanding Industry Training Program to operate programs under the CIT Program. Effective June 30, 2005, funds available to the New and Expanding Industry Training Program will not revert at the end of a fiscal year but will remain available until expended.

This section became effective July 1, 2005, except as otherwise provided. (SI)

Education Program Auditing Function

S.L. 2005-276, Sec. 8.6 (SB 622, Sec. 8.6) directs the State Board of Community Colleges to conduct an annual audit of each community college's programs and fiscal operations. The education program audit findings must be forwarded to the community college president, board of trustees, State Board of Community Colleges, and State Auditor. When an audit exception results from nonprocessing errors, the State Board of Community Colleges must assess a 25% fiscal penalty in addition to the exception.

This section became effective July 1, 2005. (RJ)

Extend the Sunset on Training and Reemployment Contributions Made by Employers

S.L. 2005-276, Sec. 8.8 (SB 622, Sec. 8.8) extends the sunset on the Employment Security Commission Training and Employment Account from January 1, 2006, to January 1, 2011. Under certain conditions, the North Carolina System of Community Colleges uses these funds to provide various worker training programs and provide equipment.

This section became effective July 1, 2005. (SK)

Exempt Community College Massage and Bodywork Therapy Programs from Licensure by the North Carolina Board of Massage and Bodywork Therapy

S.L. 2005-276, Sec. 8.15 (SB 622, Sec. 8.15) exempts massage and bodywork therapy programs operated by a North Carolina community college that are accredited by the Southern Association of Colleges and Schools from the approval and licensure process established by the North Carolina Board of Massage and Bodywork Therapy (Board). The act grants the same exemption from the approval and licensure process to massage and bodywork therapy programs operated by a degree or diploma granting college or university that offers a degree or diploma in massage therapy and is accredited by any accrediting agency recognized by the United States Department of Education and licensed by the North Carolina Community College System or the Board of Governors of The University of North Carolina. The act requires the community college, college, or university to annually certify to the Board that its program meets the minimum standards for curriculum, faculty, and learning resources established by the Board. Students who complete the program will qualify for licenses from the Board as if the program were approved, licensed, or both, by the Board.

This section becomes effective July 1, 2006. (DC)

Procurement of Professional Services

S.L. 2005-370 (HB 576). See **State Government**.

Universities

North Carolina State University Dairy Sales

S.L. 2005-20 (HB 752) exempts the sale of dairy products produced by North Carolina State University at University-owned facilities from the Umstead Act. The Umstead Act prohibits State agencies from competing with private businesses in various commercial activities. The profits from the sale of the dairy products must be used to support the Department of Food Science and College of Agriculture and Life Sciences at North Carolina State University.

This act became effective April 28, 2005. (DC)

The University of North Carolina Service Contracts

S.L. 2005-125 (HB 678). See **State Government**.

The University of North Carolina at Pembroke/Historically American Indian University

S.L. 2005-153 (HB 371) designates the University of North Carolina at Pembroke as North Carolina's Historically American Indian University.

This act became effective July 5, 2005. (SI)

North Carolina Agricultural and Technical University Campus Parking

S.L. 2005-165 (HB 1552) authorizes the board of trustees of North Carolina Agricultural and Technical State University to adopt ordinances that prohibit, regulate, and limit the parking of motor vehicles on certain named streets in Greensboro where that city does not prohibit parking. Additionally, the board of trustees may regulate traffic on portions of certain named streets that abut the university.

This act became effective July 7, 2005. (RJ)

Board of Governors' Dental Scholarships

S.L. 2005-276, Sec. 9.9 (SB 622, Sec. 9.9) provides that the current Board of Governors' Dental Scholarship Program, administered by the Board of Governors (Board) of The University of North Carolina, must make any awards to students admitted after July 1, 2005, as scholarship loan programs. The Board of Governors' Dental Scholarship Program must be used to provide a four-year scholarship loan of relevant tuition and fees, mandatory medical insurance, required laptop computers for first-year students, required dental equipment, and an annual payment of $5,000 per year to students who have been accepted for admission to the School of Dentistry at the University of North Carolina at Chapel Hill. The Board may adopt standards for awarding these scholarship loans and must make an effort to identify and encourage minority and economically disadvantaged youth to enter the program.

Repayment. – All scholarship loans must be repaid to the Board, at an annual interest rate of 10%, beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The scholarship loan may be terminated by the recipient withdrawing from school or by the recipient not meeting the standards set by the Board.

Forgiveness. – The Board must forgive the loan if, within seven years after graduation, the recipient practices dentistry in North Carolina for four years. The Board must also forgive the loan if it finds that it is impossible for the recipient to practice dentistry in North Carolina for four years, within seven years after graduation, because of the death or permanent disability of the recipient.

Any dental scholarship awarded prior to July 1, 2005, must remain a scholarship and must not be converted to a scholarship loan unless the recipient agrees to the conversion.

This section became effective July 1, 2005. (SI)

Board of Governors' Medical Scholarships

S.L. 2005-276, Sec. 9.10 (SB 622, Sec. 9.10) converts the Board of Governors' Medical Scholarship Program to a scholarship loan program, beginning with awards to qualified students admitted after July 1, 2005, to the Duke University School of Medicine, the Brody School of Medicine at East Carolina University, the University of North Carolina at Chapel Hill, or the Wake Forest University School of Medicine. Each scholarship loan will cover relevant tuition and fees, mandatory medical insurance, required laptop computers, and an annual payment of $5,000 per year. All scholarship loans must be repaid to the Board, at an annual interest rate of 10%, beginning September 1 after completion of the program, or immediately after termination of the scholarship loan, whichever is earlier. The Board of Governors must establish the qualifications needed to be eligible for these loans. The loans will be forgiven if the recipient practices medicine in North Carolina for four years, within seven years of graduation, or if the recipient is unable to meet the criteria because the recipient dies or is permanently disabled. Any medical scholarship

awarded before July 1, 2005, remains a scholarship unless the recipient agrees to convert it to a scholarship loan.

This section became effective July 1, 2005. (RJ)

Teacher Scholarships Funds

S.L. 2005-276, Sec. 9.11 (SB 622, Sec. 9.11) creates a Future Teachers of North Carolina Scholarship Loan Fund (Fund). The purpose of the Fund is to provide a two-year scholarship loan of $6,500 per year during the junior and senior years for any North Carolina student while they are in an accredited teacher preparation program at a State or private institution of higher education.

To receive the scholarship, a student must agree to become certified in math, science, special education, or English as Second Language and teach full-time in that subject in a North Carolina public school for three years within five years of graduation. The recipient must also have maintained a "B" or better average in college or in a college transfer curriculum at a community college before enrollment in a teacher preparation program. If a student fails to comply with the terms of the scholarship, then the student must repay the full amount of the scholarship loan provided to the student and the interest as determined by the State Education Assistance Authority.

The State Education Assistance Authority must administer the fund and award 100 scholarship loans annually. The Board of Governors must adopt rules to implement the program. The Board of Governors, the State Board of Community Colleges, and the State Board of Education must prepare a clear written explanation of the fund and information about availability of and criteria for awarding the scholarship loans. The Board of Governors must report to the Joint Legislative Education Oversight Committee by March 1 annually on the Fund and scholarship loans awarded from the Fund.

This section became effective July 1, 2005. (SK)

Amend North Carolina School of Science and Math Tuition Grant

S.L. 2005-276, Sec. 9.14 (SB 622, Sec. 9.14) modifies the tuition grants awarded to students of the North Carolina School of Science and Mathematics who elect to attend one of the State's 16 public universities. The act provides that a tuition grant may not exceed the cost of attendance at the constituent institution for which the tuition grant is awarded. The State Education Assistance Authority must reduce the amount of the tuition grant so that the sum of all grants and scholarship aid covering the cost of attendance received by the student, including the tuition grant, does not exceed the cost of the attendance for the constituent institution where the student is enrolled. The State Education Assistance Authority determines the cost of attendance.

This section became effective July 1, 2005 and applies to any eligible student who is enrolled full-time in The University of North Carolina after July 1, 2005. (DC)

Distinguished Professors Endowment Trust Fund

S.L. 2005-276, Sec. 9.21 (S.B. 622, Sec. 9.21) amends the allocation of challenge grant funds, contribution commitments that are eligible for matching, and the total sum of the challenge grant and matching funds needed for establishing an endowed chair under the Distinguished Professors Endowment Trust Fund.

This section became effective July 1, 2005. (SK)

Encourage the Establishment of Private Nonprofit Corporations to Support The University System

S.L. 2005-276, Sec. 9.22 (SB 622, Sec. 9.22) directs the Board of Governors of The University of North Carolina to encourage the establishment of private nonprofit corporations to support the constituent institutions of The University of North Carolina and The University System. Employees of The University of North Carolina may be assigned to assist with the establishment and operation of a nonprofit corporation. Office space, equipment, supplies and other related resources may be made available to the nonprofit corporation by the constituent institutions and The University of North Carolina. The sole purpose of the corporation, however, must be to support The University of North Carolina or one or more of its constituent institutions.

The board of directors of each private nonprofit corporation must pay for the services of The University System's internal auditors or employ a certified public accountant to audit the financial accounts of the corporation. This financial audit report must be reported to the Board of Governors of The University of North Carolina.

This section became effective July 1, 2005. (DC)

Eliminate Reporting Requirement for School Administrator Training Programs

S.L. 2005-276, Sec. 9.23 (SB 622, Sec. 9.23) eliminates the annual report by the Board of Governors on the establishment of a competitive proposal process for school administrator training programs within the constituent institutions of The University of North Carolina.

This section became effective July 1, 2005. (SI)

Continue Academic Common Market Program

S.L. 2005-276, Sec. 9.24 (SB 622, Sec. 9.24) enacts a new G.S. 116-43.10 to authorize the Board of Governors of The University of North Carolina to continue the State's participation in the Academic Common Market program. This program, operated by the Southern Regional Education Board, provides a mechanism for North Carolina students to enroll at reduced rates in participating out-of-state graduate programs that are not available within the State's university system. The program also authorizes students from participating states to enroll in unique North Carolina graduate programs at the in-State tuition rate.

The Board of Governors must report on this program each biennium, beginning September 2007, to the Joint Legislative Education Oversight Committee.

This section became effective July 1, 2005. (RJ)

Tuition Waiver Program Expansion

S.L. 2005-276, Sec. 9.25 (SB 622, Sec. 9.25) provides that any person who is a full-time employee of The University of North Carolina, or spouse or dependent child of a full-time employee and a legal resident of the State qualifies for the in-State tuition rate without having maintained that legal residence for at least 12 months immediately before being classified as a resident for tuition purposes.

This section became effective July 1, 2005. (SK)

See also **Studies** subheading in this chapter.

Brody School of Medicine at East Carolina University/Medicare Receipts/Family Medicine Center

S.L. 2005-276, Sec. 9.26 (SB 622, Sec. 9.26) eliminates the requirement that funds budgeted by the General Assembly from Medicare reimbursements at the Brody School of Medicine at East Carolina University (School of Medicine) for education costs be credited to that code as a receipt. The act also eliminates the requirement that the remainder of the funds be transferred to a special funds account on deposit with the State Treasurer that was used for repayment of Medicare funds due to final audit settlements. The act provides that funds received prior to July 1, 2005, that were transferred to a special fund account on deposit with the State Treasurer are appropriated to the School of Medicine and may be expended for the family medicine center and for purposes consistent with its stated mission.

The section further repeals subsections (b) and (c) of Section 87 of Chapter 321 of the 1993 Session Laws. These sections allowed the Brody School of Medicine to retain receipts from the lease of the Magnetic Resonance Imaging building and equipment in an institutional trust fund and allowed the revenue for the treatment of patients in the Radiation Therapy Facility to accrue to the East Carolina School of Medicine Medical Faculty Practice Plan accounts.

The Board of Governors of The University of North Carolina may authorize the design and construction of a family medicine center on the Health Sciences Campus of the School of Medicine. As of July 1, 2005, the School of Medicine is no longer required to reimburse the General Fund for use of outpatient facilities built with General Fund monies.

This section became effective July 1, 2005. (DC)

Scholarship Student

S.L. 2005-276, Sec. 9.27 (SB 622, Sec. 9.27) allows the Board of Trustees of a constituent institution of The University of North Carolina, if it elects to do so, to consider as residents of North Carolina all persons who (1) receive full scholarships to the institution from entities recognized by the institution and (2) attend the institution as undergraduate students. These persons must be considered residents of North Carolina for all purposes by The University of North Carolina.

This provision specifies that this law must not be applied in any manner that violates federal law and must be administered by the electing constituent institution so that it has no fiscal impact. In administering this provision, the electing constituent institution must maintain at least the current number of North Carolina residents admitted to that constituent institution.

Definitions. – "Full scholarship" means a grant that meets the full cost for a student to attend the constituent institution for an academic year. "Full cost" means an amount calculated by the constituent institution that is no less than the sum of tuition, required fees, and on-campus room and board.

This section became effective July 1, 2005, and applies to students who accept admission to a constituent institution on or after that date. (SI)

Physical Education – Coaching Scholarship Loan

S.L. 2005-276, Sec. 9.31 (SB 622, Sec. 9.31) creates the Physical Education – Coaching Scholarship Loan Fund (Fund) to provide scholarship loans to students who pursue college degrees to become public school teachers and coaches or assistant coaches. The State Education Assistance Authority (SEAA) will administer the Fund which will provide 25 scholarship loans per year. The loan amount is limited to $4,000 per recipient per year. The SEAA is directed to develop the criteria for awarding the scholarship loans in consultation with the Board of Governors of The University of North Carolina. The criteria must include all of the following:

- The applicant must be enrolled in an accredited bachelor's degree program in an institution of higher education in the State.
- Every student who is awarded the scholarship loan must sign a legal agreement and promissory note with the SEAA to accept employment as a coach or coaching assistant in a school in North Carolina in exchange for receiving any funds.
- The applicant must be a resident of North Carolina.
- Any additional criteria the SEAA considers necessary including:
  - Consideration of applicants from diverse backgrounds.
  - Consideration of the academic qualifications of the individuals applying to receive funds.
  - Consideration of the commitment an individual applying to receive funds demonstrates to the profession of coaching.

The SEAA must ensure that the following loan cancellations and repayment schedules apply to all funds distributed:

- A recipient who graduates with a bachelor's degree and works as a school coach or coaching assistant in a rural or other need-based area of the State can have that amount of the loan cancelled that is based on the amount of time employed and the number of academic years funds were received. One full year of employment cancels one academic year's loan.
- A recipient who graduates with a bachelor's degree and does not work as a school coach or assistant coach in a rural or other need-based area of the State for any or all of the equivalent of the number of years funds were received must repay the loan to the SEAA according to the schedule in the promissory note plus 10% annual interest.
- A recipient who does not graduate with a bachelor's degree must repay the loan according to a schedule prescribed by the SEAA not to exceed 15% annual interest. The SEAA must consider the reasons the recipient did not graduate with a bachelor's degree in establishing the schedule and interest rate.

The SEAA has the authority to forgive or reduce any loan repayment if the SEAA considers that extenuating circumstances exist that would make repayment impossible. The SEAA is directed to adopt rules to implement the Fund and must report to the Joint Legislative Education Oversight Committee annually by March 1 about the Fund and scholarship loans awarded from the Fund.

This section became effective July 1, 2005. (DC)

Nursing Scholars Program

S.L. 2005-276, Sec. 9.33 (SB 622, Sec. 9.33) amends the law that established the Nursing Scholars Program by creating the following waiver:

- If a recipient is awarded a scholarship loan under this program and is enrolled, or accepted for enrollment, in a baccalaureate nursing program, but is unable to pursue the course of study in nursing due to limited faculty resources at the institution for that semester, then the recipient must continue to receive the scholarship loan for that semester and must not be required to forfeit or repay the scholarship loan for that semester provided that the recipient remains otherwise eligible for the program.
- The waiver is valid for only one semester of study and may extend a recipient's eligibility for funding under the program by no more than one semester.

This section became effective July 1, 2005. (SI)

Professional Development Programs for Public School Employees

S.L. 2005-276, Sec. 9.34 (SB 622, Sec. 9.34) alters the procedure for the State Board of Education (Board) to monitor professional development programs for school personnel that are administered by the Board of Governors of The University of North Carolina (BOG). These changes: (i1 eliminate the requirement that the BOG must submit to the Board, the Joint Legislative Education Oversight Committee, and the General Assembly, an annual written report that evaluates the effectiveness of professional development programs provided by the Center for School Leadership and that documents how these programs are addressing State needs identified by the Board; (2) eliminate the requirement that the Board must analyze whether these programs are using Board-recommended strategies to improve student achievement; (3) eliminate the Board's annual report of this analysis to the Joint Legislative Education Oversight Committee; and (4) substitute requirements that the BOG must submit to the Board an annual report that evaluates these programs, the Board must evaluate these programs on an annual basis, and, after consulting with the BOG, the Board must make recommendations concerning the programs.

This section became effective July 1, 2005. (RJ)

Repeal Sunset on The University of North Carolina Design Contracts/Report

S.L. 2005-300 (HB 1464). See **State Government**.

The University of North Carolina Nonappropriated Capital Projects

S.L. 2005-324 (HB 1775). See **Finance**.

The University of North Carolina/Amend Umstead Act

S.L. 2005-397 (HB 1539) amends the Umstead Act to broaden the scope of activities that may be undertaken by The University of North Carolina (University) without violating the prohibition against State agencies engaging in businesses customarily rendered by private enterprises. The act also directs the Board of Governors to establish a panel that will determine whether an activity is authorized by one of the exceptions created by this act. The act adds the following new exceptions to the Umstead Act:

- Activities that further the mission of the University.
- Activities that serve students or employees of the University or members of their immediate families or guests of students.
- Activities that provide or market University-related services and merchandise to alumni and their families.
- Activities that enable the community in which a constituent institution or other University entity is located, or the people of the State to utilize the University's facilities, equipment, or expertise. If the University engages in this activity, it must provide electronic notice to anyone who has requested such notice prior to engaging in the new activity.

The Board of Governors must establish and publish procedures to be used by the panel including information related to initiating a determination by the panel, requesting notification of

panel meetings, and requiring that the panel's meetings, minutes, and determinations will be posted on the University website.

The University may rely on a determination made by the panel and the determination will be an absolute defense in any prosecution for an activity undertaken before a contrary determination is made by a court or the Attorney General. The panel does not have the power to overrule a prior determination of the Attorney General.

The act also provides for the creation of an institutional trust fund for proceeds from several of the new activities authorized by this act.

This act became effective September 14, 2005. (KCB)

Testing Requirements/Teacher Education Students

S.L. 2005-419 (HB 1310) requires the State Board of Education to allow students to use either their SAT score or Praxis I scores to qualify for admission to an approved teacher education program in a North Carolina college or university. The State Board of Education must set the required minimum scores for these tests. The minimum combined verbal and mathematics score on the SAT must be between 900 and 1,200. Currently, State Board of Education policy requires students to meet required minimum scores on the Praxis I tests before admission to approved teacher education programs in the State.

This act became effective September 22, 2005, and applies to students seeking admission to a teacher education program beginning with the 2006-2007 academic year. (SK)

Vetoed Legislation

Facilitate Hiring of Teachers

HB 706. See **Vetoed Legislation** Chapter.

Studies

Legislative Research Commission

The University of North Carolina at Chapel Hill Continue to Operate Horace Williams Airport

S.L. 2005-276, Sec. 9.15 (SB 622, Sec. 9.15) authorizes the Legislative Research Commission (Commission) to study the continued viability of the Area Health Education Centers (AHEC) program if the Horace Williams Airport is not available. The University of North Carolina at Chapel Hill must operate the Horace Williams Airport and continue air transportation support for the AHEC program and the public from that location until 30 days after the adjournment of the 2005 General Assembly.

The Commission must report its findings to the General Assembly no later than the 2006 Session.

This section became effective July 1, 2005. (DA)

School-Based and School-Linked Health Education Centers

S.L. 2005-276, Sec. 10.59G (SB 622, Sec. 10.59G) authorizes the Legislative Research Commission (Commission) to study and evaluate the number of school-based and school-linked

health centers in providing primary care, mental health, and other health care services to determine the centers' impact on providing health care. The Commission may consult with the North Carolina Association of School-Based and School-Linked Health Centers, the North Carolina Pediatric Society, the Adolescent Pregnancy Prevention Coalition of North Carolina, the Department of Health and Human Services, Division of Public Health and other interested parties. The Commission may make an interim report to the 2006 Regular Session of the 2005 General Assembly and must make its final report to the 2007 General Assembly upon its convening.

This section became effective July 1, 2005. (DC)

Referrals to Existing Commissions/Committees

Joint Legislative Education Oversight Committee Studies

School Employee Salary Study

S.L. 2005-276, Sec. 7.47 (SB 622, Sec. 7.47) directs the Joint Legislative Education Oversight Committee to study the salary structure for teachers.

This section became effective July 1, 2005. (RJ)

Study In-State Teacher Tuition Benefit

S.L. 2005-276, Sec. 9.35 (SB 622, Sec. 9.35) authorizes the Joint Legislative Education Oversight Committee to study the current law regarding the in-State tuition rate given to certain teachers for courses that are relevant to teacher certification or professional development. The Committee must consider the difficulty for some teachers in establishing the State as their domicile. The Committee must also consider that some nonresident teachers commute from their homes in other states to teach in North Carolina public schools and are unable to establish the State as their domicile. The Committee must make an interim report by May 30, 2007, and a final report to the 2007 General Assembly.

This section became effective July 1, 2005. (SK)

Referrals to Departments, Agencies, Etc.

Study Ways to Reduce Dropout Rate

S.L. 2005-271 (SB 408) requires the State Board of Education to identify research-based methods to reduce the dropout rate and the number of suspended students, especially in high-poverty schools with diverse student populations. The State Board of Education must review the research for best practices, effective policies, and model programs that work to reduce the number of dropouts and suspensions. The State Board of Education must report to the Joint Legislative Education Oversight Committee by January 2006 on its findings.

This act became effective August 12, 2005. (SK)

Planning Time for Teachers

S.L. 2005-276, Sec. 7.30 (SB 622, Sec. 7.30) directs the State Board of Education to report on best practices for schools to provide five hours per week within instructional days for planning, collaboration, and professional development. The Board must report to the Education

Cabinet and the Joint Legislative Education Oversight Committee by January 15, 2006, and must disseminate the best practices to schools.

This section became effective July 1, 2005. (RJ)

Learn and Earn High Schools

S.L. 2005-276, Sec. 7.32(d) (SB 622, Sec. 7.32(d)) directs the State Board of Education, in consultation with the State Board of Community Colleges and the Board of Governors of The University of North Carolina, to make an annual evaluation of the Learn and Earn high school workforce development program. The measures to be examined include:

- An accounting of how funds and personnel resources were used and their impact on student achievement, retention, and employability,
- Recommended statutory and policy changes, and
- Recommendations to improve the program.

The State Board of Education must report the results of this evaluation to the Office of Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by January 15 of each fiscal year.

This section became effective July 1, 2005. (SK)

Education Cabinet

S.L. 2005-276, Sec. 7.38 (SB 622, Sec. 7.38) amends G.S. 116C-1 to add to the Education Cabinet (Cabinet) the Secretary of Health and Human Services.

This section also directs the Education Cabinet to study collaboration among school nurses, school social workers, other instructional support personnel, and local health, mental health, and social services providers. The Cabinet also must study the need for additional training for instructional support personnel on multidisciplinary assessments, referral, and care coordination for at-risk students and their families. The Cabinet must report its results of these studies to the Joint Legislative Education Oversight Committee by April 15, 2006.

This section became effective July 1, 2005. (RJ)

Feasibility Study for Developing Regional Education Networks

S.L. 2005-276, Sec. 7.42 (SB 622, Sec. 7.42) directs the North Carolina Rural Economic Development Center and the e-NC Authority to perform a feasibility study on developing regional education networks to provide and sustain broadband service access to individual students and teachers in schools, community colleges, and universities. The study must include an evaluation of existing technology and service applications and an evaluation of new technology such as wireless broadband access. The study must recommend ways to maximize the use of existing resources to support growth in broadband service access to the State. The results of the study are to be reported to the 2006 Regular Session of the 2005 General Assembly.

This section became effective July 1, 2005. (DC)

Study of School Transportation

S.L. 2005-276, Sec. 7.57 (SB 622, Sec. 7.57) directs the Department of Public Instruction to hire an independent consultant to study the current allotment formula for school transportation. The consultant must consider whether (1) the current formula sufficiently encourages the efficient and effective use of school transportation funds by urban and rural

school systems, (2) the formula is adequately and equitably meeting the needs of school systems, and (3) the formula is appropriate in light of the Leandro litigation.

The consultant must report the results of the study to the State Board of Education by December 1, 2005. The State Board of Education must submit a plan for the implementation of the consultant's report to the Joint Legislative Education Oversight Committee by March 15, 2006.

This section became effective July 1, 2005. (DA)

Reports on the Expenditure of Supplemental Funds for Low-Wealth Counties

S.L. 2005-276, Sec. 7.60 (SB 622, Sec. 7.60) directs local boards of education to report to the State Board of Education (State Board) annually by August 31 on the expenditure of supplemental funds for low-wealth counties and how these funds were targeted and used to implement improvement strategies of each local school administrative unit and its schools. The State Board must report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

This section became effective July 1, 2005. (DA)

Provide for New Accountability for the Use of Funds in the At-Risk and Improving Student Accountability Allotments

S.L. 2005-276, Sec. 7.61 (SB 622, Sec. 7.61) provides that in order to remain eligible for the At-Risk/Alternative Schools allotment and the Improving Student Accountability allotment, local school administrative units must submit a report to the State Board of Education by October 31 of each year detailing the expenditure of the funds and the impact of these funds on student achievement. The State Board of Education must report this information annually by October 31 to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division.

This section became effective July 1, 2005. (DA)

Ferry Boat Operator Training Feasibility Study

S.L. 2005-276, Sec. 8.7 (SB 622, Sec. 8.7) directs the State Board of Community Colleges (State Board), in consultation with the Ferry Division of the Department of Transportation, to study the need for training for ferry boat operators. The State Board must consider the following;

- Types of training needed and the feasibility of community colleges to provide the training.
- Estimated number of students.
- Estimated employment opportunities for students.
- Start-up costs for program and resources for costs.
- Location of the training.

The State Board must report to the Joint Legislative Education Oversight Committee and the Joint Legislative Transportation Oversight Committee by December 1, 2005.

This section became effective July 1, 2005. (SK)

Enrollment Growth Fund/Encourage Partnerships for New 2+2 Programs

S.L. 2005-276, Sec. 9.2 (SB 622, Sec. 9.2) directs the Office of the President of The University of North Carolina to obtain plans from each campus as to how they will maintain their current enrollment in the teacher education programs and achieve their growth targets to ensure such increases in those programs occur. The Office of the President must report to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee no later than December 30, 2005, on each campus's plan. The Office of the President must also submit a report, no later than March 31, 2006, on progress towards meeting this priority for the 2006-2007 academic year, based on each campus's current students in the education programs, and the students who have been accepted for the 2006-2007 fiscal year who are enrolling in the education programs.

This section also directs the Board of Governors of The University of North Carolina and the State Board of Community Colleges to strongly encourage the constituent institutions and the community colleges that do not currently have 2+2 programs that emphasize teacher education to design and enter into formal partnerships to offer those programs. The Board of Governors and the Board of Community Colleges must report to the Joint Legislative Education Oversight Committee by February 1, 2006, regarding the status of existing 2+2 programs and any new partnerships established.

This section became effective July 1, 2005. (DA)

The University of North Carolina and the North Carolina Community Colleges System Joint Initiative for Teacher Education and Recruitment

S.L. 2005-276, Sec. 9.3 (SB 622, Sec. 9.3) specifies that eight regional positions are funded in the Regional Alternative Licensure Centers of the Department of Public Instruction to assist with improving articulation between community colleges and universities and with increasing the number of certified teachers in the State. These individuals will resolve curriculum issues between universities and community colleges, serve as licensure advisors to prospective teachers, review credentials of lateral entry candidates, offer admissions advice to community college transfer students, and recruit prospective teachers on community college campuses. The results of this initiative must be reported annually, beginning September 1, 2006, to the State Board of Education, the State Board of Community Colleges, the Board of Governors of The University of North Carolina, the Joint Legislative Education Oversight Committee, the Education Cabinet, and the Office of State Budget and Management.

This section became effective July 1, 2005. (RJ)

Enrollment Growth Funding Model

S.L. 2005-276, Sec. 9.4 (SB 622, Sec. 9.4) directs the Office of State Budget and Management, with The University of North Carolina and the Fiscal Research Division, to conduct a comprehensive review of the following aspects of the enrollment funding model:

- Review the assumptions in each element of the formula.
- Obtain current benchmark information related to specific elements within the formula.
- Examine the impact of the alternative elements and assumptions.

An alternative model must be created and used to prepare a request for enrollment growth funding for the 2007 Session of the North Carolina General Assembly. The new model must be shown in comparison to the current model of enrollment growth funding.

This section became effective July 1, 2005. (SK)

Study of Distance Education

S.L. 2005-276, Sec. 9.7 (SB 622, Sec. 9.7) directs the Office of State Budget and Management to conduct a study to identify and analyze the distance education programs at the constituent institutions of The University of North Carolina. The study must include the following:

- Identify any duplication in course and program offerings, leader courses and programs at campuses in a particular area of study.
- The cost of developing online courses.
- Determine which campuses are best suited to offer a particular course or program of study.

The findings must be reported to the Joint Legislative Education Oversight Committee by April 30, 2006.

This section became effective July 1, 2005. (DC)

Information Technology Procurement

S.L. 2005-276, Sec. 9.8 (SB 622, Sec. 9.8) allows The University of North Carolina and its constituent institutions to participate in the aggregation of purchasing administered by the Office of Information Technology Services. This section directs the Office of State Budget and Management to conduct a cost comparison study of hardware, software license, and multiyear maintenance agreement purchases made by The University of North Carolina and its constituent institutions and by the Office of Information Technology Services to determine if further aggregation is cost-justified. The report of comparative unit costs must be completed by December 31, 2005.

This section became effective July 1, 2005. (DA)

Tuition Waiver Program Expansion

S.L. 2005-276, Sec. 9.25 (SB 622, Sec. 9.25) directs the Board of Governors of The University of North Carolina and the State Board of Community Colleges to study the feasibility of a tuition waiver exchange for their full-time employees. Under the program, a full-time employee of The University of North Carolina could take a specified number of courses at a community college without paying tuition. Also, a full-time employee of a community college could take a specified number of courses at a constituent institution of The University of North Carolina without paying tuition. The Boards must report the results of the study to the Joint Legislative Education Oversight Committee by April 1, 2006.

This section became effective July 1, 2005. (SK)

2005 Military Support Act

S.L. 2005-445, Part V (SB 1117, Part V) directs the Department of Public Instruction (DPI) to study the feasibility of designating an employee to serve as its liaison to the State's military bases in order to facilitate communication and cooperation between (1) military personnel and their families and DPI and (2) military personnel and their families and the public schools.

This part became effective September 28, 2005. (RJ)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 10
Environment and Natural Resources

Tim Dodge (TD), George Givens (GG), Jeff Hudson (JH), and Jennifer McGinnis (JM)

Enacted Legislation

Air Quality

Repeal Sunset on Gasoline Requirements

S.L. 2005-196 (SB 316) repeals the sunset of S.L. 2002-75, which deems federal low-sulfur gasoline standards as compliant with State low-sulfur gasoline standards. 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 (the "30/80 Standard"). In 2000, the United States Environmental Protection Agency (EPA) adopted federal low-sulfur standards that differed from North Carolina's standard. S.L. 2002-75 provides that gasoline meeting low-sulfur standards established by the EPA is deemed to be compliant with State low-sulfur gasoline standards. Under the current EPA low-sulfur gasoline standards, the annual average sulfur concentration in gasoline manufactured or sold nationwide is capped at 90 ppm and the sulfur content in gasoline is capped at a maximum concentration of 300 ppm. Beginning January 1, 2006, the EPA standards for sulfur concentration in gasoline will be lowered so that the EPA standards and the State standards will become essentially equivalent except that the 80 ppm. annual average sulfur concentration standard will be determined on the basis of a national, rather than statewide, average.

This act became effective July 15, 2005. (TD)

Coastal Development

Implement Coastal Habitat Protection Plan

S.L. 2005-443 (SB 998) implements two of the water quality recommendations of the Coastal Habitat Protection Plan as follows:

Riparian Buffer Restoration Fund: The act provides that under the Riparian Buffer Restoration Fund, the water quality benefits of alternatives to riparian buffers do not have to directly offset the water quality benefits of a specific riparian buffer that is lost. The act also provides that the Department of Environment and Natural Resources, rather than the Division of Water Quality, will be responsible for administering the Fund. These provisions became effective September 27, 2005.

Erosion Control: The act changes the time period for planting or otherwise providing a slope with ground cover, devices, or other structures sufficient to restrain erosion from 15 working days or 30 calendar days, whichever is shorter, to 21 calendar days. The act also provides that ground cover may be temporary or permanent. These provisions became effective October 1, 2005. (JH)

Fisheries

Implement Coastal Recreational Fishing License/Amend Fisheries Laws

S.L. 2005-455 (SB 1126) makes a number of changes to the coastal and inland fishing license statutes as follows:

Fishing License Requirements

Amend Coastal Recreational Fishing Licenses (CRFL).

(A CRFL authorizes recreational fishing in coastal and joint waters).

- License Types:
  - Annual Resident CRFL – $15.
  - Annual Nonresident CRFL – $30.
  - 10-day Resident CRFL – $5.
  - 10-day Nonresident CRFL – $10.
  - Various Lifetime CRFLs – Fees vary.
- Exemptions for individuals who:
  - Are under 16 years of age.
  - Hold a Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License purchased prior to January 1, 2006.
- Optional For Hire Blanket CRFL (annual license that authorizes all individuals on board a for hire boat to fish without an individual CRFL) – Fees are based on the number of passengers that the boat is authorized to carry and range from $250 to $350.
- Optional Ocean Fishing Pier Blanket CRFL (annual license that authorizes all individuals on the pier to fish without an individual CRFL) – The fee is $4 per linear foot of pier.

Amend Inland Fishing Licenses.

(An Inland Fishing License authorizes recreational fishing in inland and joint waters).

- Repeals home county/natural bait exemption from inland fishing license requirements.

Establish Unified Fishing Licenses.

(A Unified License authorizes fishing in coastal, joint, and inland waters).

- Annual Resident Unified Sportsman/CRFL (hunting and fishing) – $55.
- Annual Resident Unified Inland/CRFL (fishing only) – $35.
- Various Lifetime Unified Sportsman/CRFLs (hunting and fishing) – Fees vary.
- Lifetime Unified Inland/CRFL (fishing only) – $450.
- Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver (fishing only) – free.

Marine Resources Fund and Marine Resources Endowment Fund

The act makes the following changes to the way in which fishing license revenues are held and disbursed:

- Establishes Marine Resources Fund to hold license revenues from non-lifetime CRFLs and Unified Licenses.
- Establishes Marine Resources Endowment Fund to hold license revenues from lifetime CRFLs and Unified Licenses.
- Provides that the Marine Fisheries Commission (MFC) and the Wildlife Resources Commission (WRC) may jointly disburse funds from the Marine Resources Fund and investment income from the Marine Resources Endowment Fund to manage, protect, restore, develop, cultivate, conserve, and enhance State marine resources.
- Provides that funds may not be disbursed for the establishment of positions without specific authorization from the General Assembly.

- Provides that the Fisheries Director will coordinate proposals for disbursement.
- Directs the Chairs of the MFC and WRC to jointly report to the Joint Legislative Commission on Seafood and Aquaculture on the Funds.
- Transfers the sum of $3.4 million from the Wildlife Endowment Fund to the Marine Resources Endowment Fund over a period of 5 years.
- Provides that the WRC may disburse up to $1 million to implement this act, to be reimbursed from the Marine Resources Fund on July 1, 2010. This provision became effective July 1, 2005.

Except as otherwise noted, the Marine Resources Fund and Marine Resources Endowment Fund provisions of this act become effective January 1, 2006. The licensing provisions of this act become effective January 1, 2007. (JH)

Forestry

Amend Forest Development Act

S.L. 2005-126 (HB 698) amends the findings and purposes of the Forest Development Act (Act) and expands the list of approved practices that are eligible for cost-share funds from the Forest Development Fund (Fund) to include practices to insure maximum growth potential of forest stands and the improvement of immature timber stands for silvicultural purposes. The Act provides cost-sharing funds to eligible landowners in the State to help offset the costs of management practices designed to promote reforestation and improve the productivity of commercial forestlands. The Fund receives revenue from an assessment on primary forest products (sawtimber, veneer, pulpwood, etc.) produced in the State. To be eligible for cost-share assistance, a landowner must have a forest management plan that has been approved by the Division of Forest Resources of the Department of Environment and Natural Resources.

This act became effective June 29, 2005. (TD)

Division of Forest Resources/Emergency Response

S.L. 2005-128 (HB 395) designates the Division of Forest Resources of the Department of Environment and Natural Resources as an emergency response agency for the State of North Carolina for the following purposes:

- Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.
- Receipt of any applicable State or federal funding.
- Training of other State and local agencies in disaster and emergency management.
- Any other disaster and emergency response roles for which the Division of Forest Resources has special training or qualifications.

This act became effective June 29, 2005. (TD)

Clarify Regulation of Forestry

S.L. 2005-447 (SB 681). See **Local Government**.

Parks and Public Spaces

Two Additions to State Parks System

S.L. 2005-26 (SB 586) authorizes the Department of Environment and Natural Resources to add Carvers Creek State Park to the State Parks System and to add a State Park unit located in the Hickory Nut Gorge/Chimney Rock area to the State Parks System.

Carvers Creek and surrounding lands in Cumberland County represent an excellent example of the natural features of the Sandhills Region of North Carolina, with rolling hills, ravines, and narrow stream bottoms. The site includes endangered red-cockaded woodpeckers, rare plants, high quality longleaf pine forests, wetlands, and other natural communities characteristic of the Sandhills. The Carvers Creek site has been found to possess biological, scenic, and recreational resources of statewide significance.

The Hickory Nut Gorge/Chimney Rock area in and near western Rutherford County contains spectacular cliffs, rugged mountains, fissure caves, waterfalls, and unusually rich soils that support at least 36 rare plant species and 14 rare animal species. It is one of the major centers of biodiversity in North Carolina and is also of great geological interest. The Hickory Nut Gorge/Chimney Rock area has been found to possess biological, geological, scenic, and recreational resources of statewide significance.

This act became effective May 4, 2005. (JM)

Solid/Hazardous Waste

Alcohol Beverage Commission Licensees to Recycle Beverage Containers

S.L. 2005-348 (HB 1518) requires holders of malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits to provide for the separation, storage, and collection for recycling of all recyclable beverage containers sold at retail on the premises. The act directs the Alcoholic Beverage Control Commission, with the assistance of the Department of Environment and Natural Resources, to develop a model recycling program for permittees that are required to recycle beverage containers. The act also prohibits the disposal in landfills or the incineration of beverage containers that are required to be recycled under the act.

This act becomes effective January 1, 2008. (TD)

Disposal in Landfills/Additional Bans

S.L. 2005-362 (HB 1465) prohibits the disposal of motor vehicle oil filters, certain rigid plastic bottles, wooden pallets, and oyster shells in landfills. A city or county may petition the Department of Environment and Natural Resources for a waiver from the prohibition if the prohibition would result in an economic hardship for the unit of local government.

Current law prohibits a person from knowingly disposing of the following items in landfills:

- Used oil.
- Yard trash, except in landfills approved for the disposal of yard trash.
- White goods.
- Antifreeze.
- Aluminum cans.

- Whole scrap tires.
- Lead acid batteries.

The statute provides that the accidental or occasional disposal of small amounts of prohibited solid waste in a landfill is not to be construed as a violation.

A person who knowingly disposes of one of the listed items is subject to an administrative penalty not to exceed $5,000 per day in the case of a violation involving nonhazardous waste. A person who violates the provision would be guilty of a Class 1 misdemeanor.

This act becomes effective October 1, 2009. (JM)

Mercury Switch Removal-2

S.L. 2005-384 (HB 1136) requires the Department of Environment and Natural Resources (DENR) to develop and administer a mercury minimization plan that provides for the removal, collection, and recovery of mercury switches from end-of-life vehicles in order to reduce the quantity of mercury that is released into the environment.

The act also requires:

- Vehicle recyclers and scrap metal recycling facilities subject to an approved plan to remove all accessible mercury switches from end-of-life vehicles and specifies procedures for inaccessible switches.
- Maintenance of certain records and annual reporting by manufacturers, vehicle recyclers, and scrap metal recycling facilities.
- That mercury switches be removed from end-of-life vehicles so as to achieve a capture rate of at least 90%.

The act makes it unlawful for anyone to:

- Knowingly flatten, crush, bale, or shred a vehicle from which accessible mercury switches have not been removed.
- Willfully fail to remove switches if required to do so.
- Knowingly make a false report that a switch has been removed from an end-of-life vehicle.
- Obtain a switch from another source and falsely report that it was removed from a vehicle processed for recycling.

The act creates the Mercury Pollution Prevention Account (Account), the revenue from which will be used to reimburse DENR, vehicle recyclers, and scrap metal recycling facilities for costs incurred in implementing the plan. The act directs that $1.00 per transaction on certificate of certain existing vehicle registration fees be credited to the Account.

The switch removal requirements of this act become effective July 1, 2006. This act sunsets July 1, 2026. (JM)

Underground Storage Tanks

Underground Storage Tank Amendments

S.L. 2005-365 (HB 1385) amends the statutes related to the cleanup of leaking underground storage tank (UST) sites as follows:

- Codifies and repeals the sunset on the requirement that the Department of Environment and Natural Resources (DENR) establish the degree of risk to human health and the environment posed by each site and determine a schedule for cleanup of sites that gives priority to those sites that pose the greatest risk.

- Makes clarifying changes to the use of the terms "preapprove" (by eliminating its double meaning) and "authorize." The term "preapproval" is defined to mean a determination by DENR that: (1) the nature and scope of a task is reasonable and necessary under the requirements of the Commercial and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds; and (2) that the amount or rate to be paid or reimbursed does not exceed the amount or rate that is reasonable for that task. "Authorization" means a determination by DENR that a person may proceed with one or more tasks associated with the assessment or cleanup of a discharge or release from a UST.
- Makes other clarifying and conforming changes.

This act became effective September 8, 2005. (TD)

Water Quality/Quantity/Groundwater

Prohibit Methyl Tertiary Butyl Ether (MTBE) in Fuels/ Regional Cooperation

S.L. 2005-93 (HB 1336) prohibits a person from knowingly adding MTBE to any motor fuel manufactured, distributed, stored, sold, or offered for sale in the State and prohibits the manufacture, distribution, storage, sale, or offer for sale of motor fuel that contains MTBE in a concentration of more than 0.5% by volume. The act provides that the presence of MTBE caused solely by the incidental commingling of motor fuel with other motor fuel that contains MTBE is not considered a violation. A person who violates this prohibition is guilty of a Class 1 misdemeanor.

The act also directs the Secretary of Environment and Natural Resources and the Commissioner of Agriculture to study the feasibility and advantages of a coordinated approach to the phaseout of MTBE in the southeast region of the United States and to work cooperatively with other southeastern states to develop and implement a regional approach to the phaseout of MTBE.

The prohibition on MTBE in motor fuels becomes effective January 1, 2008. The remaining provisions of this act became effective June 21, 2005. (TD)

Fontana Lake Protection

S.L. 2005-97 (HB 1189) requires that the Environmental Management Commission initiate rule-making to classify the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Forney and Eagle Creeks, including Forney and Eagle Creeks, as outstanding resource waters (ORW). The act also provides that, pending the outcome of the rulemaking proceedings, the minimum management strategies set out in the rule governing ORW must apply in the watersheds.

This act became effective June 21, 2005. (JM)

Design/Build/Operate Contract Sludge Management

S.L. 2005-176 (HB 1097) authorizes local governments to enter into contracts that provide for the design, construction, and operation of sludge management facilities by a single entity and to award contracts for the management of sludge on the basis of factors other than cost alone. A sludge management facility is defined as a facility to process for final end use or disposal sludge that has been generated by a municipal wastewater treatment plant. The term does not include facilities that are part of the wastewater treatment process that generates the

sludge. Ancillary facilities such as roads, water and sewer lines, transfer stations, and other facilities must still be procured through normal competitive bidding procedures.

This act became effective July 12, 2005. (TD)

Drinking Water Supply Reservoir Protection

S.L. 2005-190 (SB 981) directs the Environmental Management Commission (EMC) to take the following actions to protect water quality in drinking water supply reservoirs in the State:

Study Water Quality in Reservoirs. – The act directs the EMC to study water quality in drinking water supply reservoirs in the State to determine whether the reservoirs meet current water quality standards. The EMC must report its findings to the Environmental Review Commission (ERC) by May 1, 2006.

Nutrient Control Criteria. – The act directs the EMC to identify any nutrient control criteria necessary to prevent excess nutrient loading in drinking water reservoirs by January 1, 2009, and to adopt final nutrient control criteria by May 1, 2010. If the EMC finds that the nutrient control criteria are not being achieved, the EMC must implement an enhanced water quality monitoring plan for the reservoir within one year of the determination.

Nutrient Management Strategy for Certain Impaired Reservoirs. – The act prohibits the EMC from making any new or increased nutrient loading allocation to certain impaired drinking water supply reservoirs if the EMC determines that the water quality in any part of the drinking water supply reservoir does not meet current water quality standards or is not likely to meet water quality standards at any time prior to July 1, 2010. The act directs the EMC to develop a nutrient management strategy based on a calibrated nutrient response model that establishes mass load limits for nitrogen and phosphorous and establishes reduction goals for nutrients for the reservoirs. This provision applies only to drinking water reservoirs that met all of the following criteria as of July 1, 2005:

- The reservoir serves a population greater than 300,000 persons.
- The EMC has classified all or part of the water in the reservoir as a nutrient sensitive water (NSW).
- Water quality monitoring data indicates that the water quality in the reservoir violates the chlorophyll A standard (not to exceed 40 µg/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters).
- The Division of Water Quality of the Department of Environment and Natural Resources has not prepared or updated a calibrated nutrient response model for the reservoir since July 1, 2002.

Eligibility Under the Clean Water Revolving Loan and Grant Program. – The act provides that a wastewater plant owned by a state agency but operated by a local government may apply for funding under the Clean Water Revolving Loan and Grant Program if the local government operator works pursuant to a contract with a State agency that contemplates that the local government will eventually acquire ownership of the wastewater plant.

Other Reservoirs. – The act prohibits the EMC from approving any new or increased nutrient loading allocation that discharges directly or indirectly into any drinking water supply reservoir that has a calibrated nutrient response model that has been prepared or updated since July 1, 2002, until permanent rules to implement the nutrient management strategy for the reservoir become effective. The EMC must report on its progress in developing and implementing these nutrient management strategies to the ERC by April 1, 2006.

This act became effective July 15, 2005. (TD)

Extend and Expand Pilot Program for Inspection of Animal Waste Management Systems

S.L. 2005-276, Sec. 12.7 (SB 622, Sec. 12.7) extends the termination date and expands the geographic coverage of the pilot program for the inspection of animal waste management systems. Under the pilot program, the Division of Soil and Water of the Department of Environment and Natural Resources (DENR) performs the required annual inspections of animal operations served by permitted animal waste management systems. The act extends the termination date of the pilot program from September 1, 2005, to September 1, 2007. The act also expands the geographic area covered by the pilot program to include Pender County, bringing the total number of counties covered to four: Brunswick, Columbus, Jones, and Pender Counties. The section modifies the reporting and recommendation requirements applicable to the program (1) to eliminate a reference to a final report, (2) to require DENR, by October 15, 2005, to recommend to the Environmental Review Commission (ERC) and the General Assembly whether to continue or expand the program, and (3) to require the ERC to recommend to the 2006 Regular Session whether to continue or expand the program.

This section became effective July 1, 2005. (JH)

County Control/Noxious Aquatic Weeds

S.L. 2005-440 (HB 1281). See **Local Government**.

Local Government Stream Clearing/Clarify Liability

S.L. 2005-441 (HB 1029). See **Local Government**.

Clarify Clean Water Funding and Procedure

S.L. 2005-454 (HB 1095) rewrites the Clean Water Revolving Loan and Grant Act to:

- Clarify the various revenue sources and funds used by the State to provide money for drinking water and wastewater loans and grants by establishing the Water Infrastructure Fund and consolidating the existing funds and accounts within this primary fund.
- Establish common criteria that apply to loans and grants made for wastewater, drinking water, and stormwater by the Department of Environment and Natural Resources (DENR) and the Clean Water Management Trust Fund.
- Direct DENR to establish criteria to be applied to the use of federal funds by negotiation with the federal government.
- Include stormwater quality projects and nonpoint source pollution projects in the types of projects that are eligible for loans and grants.
- Allow grants for technical assistance to determine how to correct problem wastewater or drinking water systems.

The act also establishes the State Water Infrastructure Commission in the Office of the Governor. The purpose of the State Water Infrastructure Commission is to identify the State's water infrastructure needs, develop a plan to meet those needs, and monitor the implementation of the plan. The Commission is required to publish an annual report on its activity and findings by November 1 of each year.

This act becomes effective January 1, 2006. (TD)

Miscellaneous

Mapping of Floodplains and Landslide Zones

S.L. 2005-1, Sec. 6 (SB 7, Sec. 6) directs the Department of Crime Control and Public Safety to update Flood Insurance Rate Maps for all of the counties included in federal disaster declarations for Hurricanes Frances and Ivan. The Department of Environment and Natural Resources, in cooperation with the Department of Crime Control and Public Safety, must act to ensure that (1) streambed maps and (2) maps indicating areas vulnerable to landslides are made available for the same multicounty area.

This section became effective February 25, 2005. (TD)

River Basin Commissions Clarifying Amendments

S.L. 2005-37 (HB 908) amends the membership requirements of the Yadkin/Pee Dee River Basin Advisory Commission to provide that one of the members may be from a water or sewer municipal utility, rather than a water or sewer municipal authority, and amends the membership requirements of the Roanoke River Basin Bi-State Commission to remove the requirement that legislative members appointed to the Commission reside within the Roanoke River Basin.

This act became effective May 12, 2005. (TD)

Ban Internet Hunting

S.L. 2005-62 (HB 772). See **Agriculture and Wildlife**.

Federal Jurisdiction over Land

S.L. 2005-69 (HB 236). See **State Government**.

Green Square Project

S.L. 2005-255 (SB 692). See **State Government**.

Expand Express Review Program Statewide

S.L. 2005-276, Sec. 12.2 (SB 622, Sec. 12.2) codifies and expands statewide the express review pilot program that was established by S.L. 2003-84, Sec. 11.4A and previously expanded by S.L. 2004-124, Sec. 12.9. Under the Express Review Program (Program), the Department of Environment and Natural Resources provides expedited review of certain environmental permits, approvals, and certifications and may charge fees higher than those set by statute for the normal review process. The Program may apply to permits, approvals, and certifications under the erosion and sedimentation control program, the coastal management program, and the water quality programs, and focuses on stormwater permits, stream origination certifications, water quality certifications, erosion and sedimentation control permits, and Coastal Area Management Act permits.

This section became effective July 1, 2005. (JH)

Analysis and Approval of Rules, Policies, or Guidelines that Affect Department of Transportation Projects

S.L. 2005-276, Sec. 28.8 (SB 622, Sec. 28.8). See **Transportation**.

Amend Environmental Laws 2005

S.L. 2005-386 (HB 1096) amends various environmental laws and makes other changes, including:

- Renames the Wetlands Restoration Program as the Ecosystem Enhancement Program.
- Authorizes the Commission for Health Services to establish a schedule for inspections of food service establishments (establishments that prepare or serve food or drink for pay) based on the risks to the population served by the establishment and the type of food or drink served by the establishment. This provision becomes effective January 1, 2007.
- Expands the programs for which funds from the Special Zoo Fund (Fund) may be used to include marketing for the North Carolina Zoological Park.
- Provides that members of the Joint Legislative Commission on Seafood and Aquaculture who are not reelected to the General Assembly may complete their term of service on the Commission. Similar language exists for most standing legislative committees and commissions.
- Makes clarifying amendments to the Sedimentation Pollution Control Act of 1973 (effective January 1, 2006).
- Renames the Air Quality Compliance Advisory Panel as the Small Business Environmental Advisory Panel.
- Provides for various exemptions from well contractor certification requirements.
- Makes technical corrections to various laws related to the environment and natural resources.
- Modifies environmental reporting requirements.

Except as otherwise provided, this act became effective September 13, 2005. (TD)

Energy Credit Banking/Selling Program/Fund

S.L. 2005-413 (SB 1149) directs the State Energy Office of the Department of Administration to establish and administer an energy credit banking and selling program for energy credits earned under the federal Energy Policy Act of 1992 (P.L. No. 102-486, commonly referred to as EPAct). EPAct requires state governments, utilities, and certain other groups to acquire or replace a certain percentage of their motor vehicle fleets as alternative fuel vehicles (AFV) each year. Current requirements are that 75% of a state's fleet new light-duty vehicle acquisitions must operate using alternative fuels. EPAct also provides that fleets can participate in a credit program that allows them to bank credits for future use or to sell excess credits to other covered fleets. Revenues generated from the sale of credits will be used to purchase alternative fuel, develop alternative fuel refueling infrastructure, and purchase AFVs for use by State departments, institutions, and agencies. These provisions become effective January 1, 2006.

The act also amends G.S. 105-129.16A (credit for investing in renewable energy property), effective beginning with the 2006 tax year, to increase the ceiling on the credit for nonresidential property from $250,000 to $2.5 million, to include pool heating in the residential property ceiling for solar energy equipment, and to expand the definition of renewable energy property in G.S. 105-129.15 to include any biomass equipment that uses renewable biomass resources for commercial thermal or electrical generation. The act extends the sunset on the tax

credits from January 1, 2006, to January 1, 2011, reorganizes other sunset provisions of Article 3B of Chapter 105 of the General Statutes, and makes other technical and conforming changes.

Except as otherwise provided, this act became effective September 20, 2005. (TD)

Manufacturing Redevelopment Districts

S.L. 2005-462 (SB 629). See **State Government**.

Studies

New/Independent Studies/Commissions

Global Warming/Climate Change

S.L. 2005-442 (SB 1134) establishes the Legislative Commission on Global Climate Change (Commission). The Commission consists of 34 members, 9 appointed by the President Pro Tempore of the Senate, 9 appointed by the Speaker of the House of Representatives, and 16 members or their designees that represent a variety of industries, organizations, and academic institutions. The Commission will study issues related to global climate change, including a review of current scientific literature on climate change, a review of policy actions at the state and federal level, and an evaluation of the costs and benefits of any action taken at the State level. The Commission may also recommend a global warming pollutant reduction goal for the State and develop other recommendations. The Commission must report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before November 1, 2006, at which time the Commission will terminate.

This act became effective September 27, 2005. (TD)

Referrals to Departments, Agencies, Etc.

Measures to Prevent or Mitigate Potential Flooding in Certain Areas

S.L. 2005-1, Sec. 7(a) (SB 7, Sec. 7(a)) directs the Department of Environment and Natural Resources to study the causes of the flooding in Canton, Biltmore Village, the City of Newland, Clyde, and other affected areas as deemed necessary to determine what measures can be taken to prevent or mitigate the flooding potential in those areas. The Department must report its findings to the 2006 Regular Session of the 2005 General Assembly.

This section became effective February 25, 2005. (TD)

Regional Approach to Phase-Out of Methyl Tertiary Butyl Ether (MTBE) in Fuels

S.L. 2005-93, Secs. 2-4 (HB 1336, Secs. 2-4) direct the Secretary of Environment and Natural Resources and the Commissioner of Agriculture to study the feasibility and advantages of a coordinated approach to the phaseout of MTBE in the southeast region of the United States and to work cooperatively with other southeastern states to develop and implement a regional approach to the phaseout of MTBE. The Secretary and the Commissioner must submit an interim

report on or before March 1, 2006, and a final report, including any findings and recommendations, to the Environmental Review Commission on or before March 1, 2007.

These sections became effective June 21, 2005. (TD)

Water Quality in Drinking Water Supply Reservoirs

S.L. 2005-190, Sec. 2 (SB 981, Sec. 2) directs the Environmental Management Commission (EMC) to study water quality in drinking water supply reservoirs in the State to determine whether the reservoirs meet current water quality standards. The EMC must report its findings to the Environmental Review Commission on or before May 1, 2006.

This section became effective July 15, 2005. (TD)

Clean Water Management Trust Fund Study Management and Stewardship of Conservation Easements

S.L. 2005-276, Sec. 6.22 (SB 622, Sec. 6.22) directs the Board of Trustees of the Clean Water Management Trust Fund to study the management and stewardship of conservation easements. The Board must report its findings and recommendations to the Environmental Review Commission by December 1, 2005.

This section became effective July 1, 2005. (JH)

Major Failed Legislation

Brunswick/New Hanover Menhaden Restrictions

House Bill 955 (First Edition) would have made it unlawful to take menhaden or Atlantic thread herring with a purse seine net within three nautical miles of the shoreline of Brunswick and New Hanover Counties from May 1 through October 31 of each year. The bill was heard in the House Committee on Environment and Natural Resources on May 10, 2005, but a motion for a favorable report failed to pass. (JH)

Improve Environmental Enforcement

House Bill 1283 (Third Edition) would have increased the amount of civil penalties that may be assessed for violations of certain environmental statutes, authorized the assessment of reasonable costs of any investigation, inspection, or monitoring that results in the imposition of a civil penalty in certain circumstances, and established a voluntary mechanism by which a person who has committed certain violations may request that the Secretary of Environment and Natural Resources enter into an administrative consent order directing the person to do any of the following: (1) attend an environmental education course, (2) publish notice of the violation, or (3) perform community service related to protection or restoration of the environment and natural resources. The bill failed second reading in the House on August 22, 2005. (TD)

Major Pending Legislation

Certify On-Site Wastewater Contractors

House Bill 688 (Third Edition) and Senate Bill 568 (First Edition) would create the nine-member North Carolina On-Site Wastewater Contractors and Inspectors Certification Board (Board) to establish training and certification requirements for personnel involved in the

construction, installation, repair, and inspection of on-site wastewater systems. The bills would also prohibit the construction, installation, repair, or inspection of an on-site wastewater system in the State by non-certified personnel.

These bills are pending in the Senate Committee on Agriculture, Environment, and Natural Resources. (TD)

Brownfields Property Reuse Act Amendments (Defenses to Liability for Environmental Cleanups)

House Bill 1099 and Senate Bill 1121 as introduced would have clarified the circumstances under which a person is liable for the cleanup of environmental damage and restoration of natural resources under a range of environmental programs. These bills would also have clarified the defenses to liability available to innocent landowners and to prospective purchasers of contaminated property. An innocent landowner is a person who did not cause or contribute to the contamination, who did not know or have reason to know of the contamination, and who meets various other requirements. Prospective purchasers would not be liable for cleanup and could request a determination of non-liability from the Secretary of Environment and Natural Resources if they meet requirements similar to those applicable to innocent landowners and, in addition, demonstrate that the seller or other responsible party has provided financial assurance for the full cost of the cleanup. The specific circumstances and requirements involved were the subject of stakeholder negotiation during much of the 2005 Regular Session.

As introduced, these bills also included several non-controversial amendments to the Brownfields Property Reuse Act of 1997. In order to allow negotiations to continue on the liability provisions after the crossover deadline, identical committee substitute bills for HB 1099 and SB 1121 that contain only the non-controversial brownfields provisions were passed by each house. HB 1099 (Second Edition) is pending in the Senate Committee on Agriculture, Environment, and Natural Resources. SB 1121 (Second Edition) is pending in the House Committee on Environment and Natural Resources. The stakeholder negotiation process is expected to continue during the interim between the 2005 and 2006 Regular Sessions. The stakeholder negotiation process is also expected to include discussion of the issues raised by HB 1778 (Risk-Based Environmental Remediation/Fund).

Both the bills as introduced and the committee substitute bills would have become effective January 1, 2006. (GG)

Cleanup of Abandoned Mobile Homes

House Bill 1288 (First Edition) would establish an advance disposal tax on the sale of new and used manufactured homes, would require counties to develop plans that provide for the management of abandoned manufactured homes, and would provide a process that counties may follow to remove and properly dispose of abandoned manufactured homes that are determined to be a nuisance.

This bill is pending in the House Committee on Finance. (TD)

Enhance Local Government Administration of Environmental Programs

House Bill 1413 (Second Edition) and Senate Bill 1114 (Second Edition), which although introduced as companion bills are no longer identical, in general, would:

- Require the self-inspection of an area covered by an approved erosion and sedimentation control plan.

- Clarify the jurisdiction of the Sedimentation Control Commission over local erosion and sedimentation control programs.
- Authorize a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities within the jurisdiction.
- Clarify that the statute that provides the fee structure for water quality permits should not be construed to limit local government fee authority for certain activities.
- Authorize local permit programs for reclaimed water utilization systems.
- Provide that local governments certified and approved by the Environmental Management Commission to enforce stormwater or riparian buffer protection programs may assess civil penalties for violations of the respective programs.

HB 1413 is pending in the Senate Committee on Agriculture, Environment, and Natural Resources. SB 1114 is pending in the Senate Committee on Finance. (JM)

Low Emission Vehicles/Funds

House Bill 1460 (First Edition) and Senate Bill 1006 (First Edition), which are not identical, would direct the Environmental Management Commission to implement a low emission vehicle program that would be the functional equivalent of the low emission vehicle program established under California law (commonly referred to as LEV-II). The program would require motor vehicles sold in the State to meet the same motor vehicle emissions standards required for vehicles sold in California, beginning with the 2008 model year and thereafter. The bills would also require all light-duty cars and trucks purchased by State departments, institutions, or agencies to comply with low emission standards beginning with the 2007 model year and would prohibit the Division of Motor Vehicles from issuing a certificate of title or registration for a vehicle that is not in compliance with the low emission standards.

SB 1006 would also exempt LEV-II vehicles registered in the State for three or fewer years from the annual safety inspection requirement.

HB 1460 is pending in the House Committee on Environment and Natural Resources. SB 1006 is pending in the Senate Committee on Agriculture, Environment, and Natural Resources. (TD)

Coastal Hazards Disclosure

House Bill 1512 (First Edition) would require that sellers of real properties designated as ocean hazard areas of environmental concern by the Coastal Resources Commission (CRC) provide each prospective purchaser of affected land a disclosure statement of coastal natural hazards at least 72 hours before the signing of a purchase contract or the receipt of any consideration by the seller. The bill would provide that if the seller fails to provide disclosure as required, the prospective purchaser may elect to cancel the contract.

The bill would require that the CRC:

- File a detailed description of each ocean hazard area of environmental concern and the specific coastal natural hazards that affect the property with the clerk of each county that includes these areas.
- Prepare a disclosure form to include information concerning rules affecting potential development or redevelopment of land.
- Maintain current information on annual erosion rates, storm recession estimates, flood levels, inlet movement, and other relevant data for all property subject to act.

This bill is pending in the Committee on Rules, Calendar, and Operations of the House. (JM)

Beach and Coastal Waterways Conservation Act

House Bill 1542 (First Edition) would establish a 12-member Beach and Waterway Council (Council), as an advisory body to the Secretary of Environment and Natural Resources, to:

- Assist the Department of Environment and Natural Resources (DENR) in developing a study of the economic impact of beaches and waterways on the economies of beach counties, the coastal region, and the State.
- Review policies for beaches, inlets, and waterways as recommended in the Coastal Habitat Protection Plan.
- Make recommendations for expenditures from the Beach, Waterway, and Public Access Fund.
- Review policies that enable and assist property owners to move structures that are threatened by imminent erosion damage.
- Review federal and State laws that relate to beach and waterway issues, including: public access, conservation, restoration, and advances in technology affecting beach conservation and restoration.

The bill also would establish the Beach, Waterway, and Public Access Fund in the State Treasurer's Office to provide grants to coastal communities for public beach and waterway conservation, restoration, and access, to be administered by DENR.

The bill would direct DENR, in consultation with the Council, to develop and implement a multiyear beach and waterway conservation, restoration, and public access plan and strategy to conserve and restore beaches and waterways. With regard to beach and waterway access, conservation, and restoration, the bill would also direct DENR to:

- Provide local governments with technical assistance.
- Coordinate the activities of federal, State, and local governments, as well as private organizations.
- Enter into cooperative agreements with other governmental entities.
- Develop criteria for local government receipt of State funds.
- Study the economic impact of beaches and waterways on the economies of beach counties, the coastal region, and the State.
- Coordinate plans to minimize impacts to fish habitats

This bill is pending in the House Committee on Environment and Natural Resources. (JM)

Risk-Based Environmental Remediation/Fund

House Bill 1778 (First Edition) would direct the Secretary of Environment and Natural Resources to adopt rules to establish a consistent and uniform risk-based approach to the assessment, prioritization, and remediation of environmental contamination. A risk-based approach involves an evaluation of the current and future risk to public health and the environment posed by the contaminants at a particular site. This evaluation is then used to determine the appropriate level of remediation required to protect public health and the environment in light of the current and future anticipated uses of the site. A risk-based approach contemplates restrictions on the current and future use of the site to ensure the continuing applicability of the plans and validity of the assumptions regarding future use on which risk calculations are based. Restrictions on current and future use may involve land-use restrictions or other types of institutional controls.

The purposes of a risk-based approach are to limit remediation costs to those necessary to achieve an acceptable level of risk in light of the uses to be made of the site, to promote economic development, to protect public health and the environment by promoting the remediation of contaminated sites, to promote the remediation of contaminated sites by conserving the resources available for remediation so that resources will be available for a

greater number of sites, and to promote redevelopment of contaminated sites as opposed to development of "greenfield" sites. The alternative to a risk-based approach is the generally more costly remediation to "pristine" or unrestricted use standards. The use of risk-based remediation raises various technical and legal issues associated with: (1) risk-evaluation methodologies; (2) acceptable levels of risk for various contaminants, receptors, and sites; (3) appropriate remediation goals, levels, and measures; and (4) application of a risk-based approach to the range of existing remediation programs and their technical and legal requirements.

Environmental contamination generally involves soil contamination, groundwater contamination, or both. Contamination may migrate from soil to groundwater and may migrate off-site, particularly in the case of groundwater contamination. Groundwater is a resource on which many people rely and the State has traditionally sought to protect and promote groundwater quality. Those who are responsible for contamination of groundwater are legally obligated to assess and remediate the contamination. In light of this, use of risk-based remediation raises, in addition to technical and legal issues, more basic policy questions. These include: (1) questions as to under what circumstances should the use of risk-based remediation be permitted, including what should be required of responsible parties in terms of guarantees that risk-based remediation will actually achieve an adequate level of protection for the environment and public health, (2) what compensation, if any, should responsible parties provide for being permitted to leave some level of contamination in place (thereby limiting the potential use of a site, and more importantly, of groundwater), and (3) to what uses should any such compensation be put.

House Bill 1778 would make risk-based remediation available to any person who is a responsible party under any of the existing State programs governing remediation of environmental contamination and who elects to use the risk-based approach provided for in rules that would be adopted as required by the bill. A person who elects to use the risk-based approach would be required to pay a fee of $3,000 per acre of contamination up to a maximum of $75,000 into the Risk-Based/Groundwater Remediation Fund. The Fund could be used only to pay (1) for remediation of a site that had previously undergone risk-based remediation but later presents an imminent hazard to public health or the environment, where a responsible party cannot be identified or located, where the responsible party is unable to pay the costs of remediation, and where no other federal or State funds are available, (2) to establish alternative drinking water supplies for third parties, (3) to establish, administer, and maintain a geographic information system capable of mapping land and water resources of the State that are remediated under risk-based remediation, and (4) for administration of the risk-based remediation program.

The unresolved issues associated with the implementation of a consistent and uniform risk-based remediation program were the subject of intensive stakeholder negotiations during the latter part of the 2005 Regular Session. However, the session adjourned before all outstanding issues could be resolved. The group of interested parties involved in these negotiations was essentially the same as that involved in the negotiations on House Bill 1099 and Senate Bill 1121 (Brownfields Property Reuse Act Amendments (Defenses to Liability for Environmental Cleanups)). The stakeholder negotiation process is expected to continue during the interim between the 2005 and 2006 Regular Sessions and to involve both topics.

This bill is pending in the House Committee on Environment and Natural Resources. (GG)

Amend Boating Safety/Vessel Titling Law

Senate Bill 948 (Second Edition) would make numerous clarifying and reorganizing changes to the laws related to boating safety and vessel titling, including the following:

- Clarify boating safety requirements by authorizing the Wildlife Resources Commission (Commission) to adopt rules to conform to the Federal Boat Safety Act of 1971 and federal regulations adopted pursuant to the Act.

- Amend the incident reporting requirements for operators of a vessel that is involved in a collision, accident, casualty, or other occurrence involving a vessel.
- Establish a mechanism for canceling the certificate of title or certificate of number for destroyed or junked vessels and direct the Commission to adopt rules to establish a mechanism by which a person may acquire ownership of an abandoned vessel.
- Require the titling of all motorized vessels or sailboats 14 feet or longer and any personal watercraft. Titling is currently required only at the time an application for a new certificate of number in this State is submitted or at the time ownership of a vessel is being transferred.
- Clarify the responsibilities and requirements for vessel agents.
- Increase fees for certain vessel titling functions, create new penalties for violations of boating safety laws, and make additional conforming and technical changes.

This bill is pending in the Senate Committee on Finance. (TD)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 11
Finance

Cindy Avrette (CA), Canaan Huie (CH), Brad Krehely (BK), and Martha Walston (MW)

*For a more detailed summary, see the **2005 Finance Law Changes** publication.*

Enacted Legislation

Hurricane Recovery Act of 2005

S.L. 2005-1 (SB 7) provides disaster assistance to individuals, businesses, and public agencies that sustained damage from one or more of the six hurricanes that struck North Carolina during the late summer and early fall of 2004. The Governor has established the Disaster Relief Reserve Fund in the Office of State Budget and Management, and this act makes appropriations to the Fund. It also provides greater income tax relief for recipients of disbursements from the Disaster Relief Reserve Fund than current law allows, effective for taxable years beginning on or after January 1, 2004.

This act became effective February 25, 2005. (CA)

NASCAR Hall of Fame Financing

S.L. 2005-68 (SB 525) authorizes the Mecklenburg County Board of Commissioners to levy an additional 2% occupancy tax upon receiving written confirmation from NASCAR that it will locate the NASCAR Hall of Fame Museum facility in Charlotte. The net proceeds of the additional 2% occupancy tax can be used only for the acquisition, construction, repair, maintenance, and financing of the NASCAR Hall of Fame Museum facility and an adjacent NASCAR convention center ballroom facility. The additional 2% tax would bring the occupancy tax rate to 8% in Mecklenburg. No other county or city in North Carolina currently has an occupancy tax rate in excess of 6%.

This act became effective May 26, 2005. (CA)

Allow Payment of Tax by Offset

S.L. 2005-134 (SB 537) provides that a taxing unit may, under limited circumstances, collect taxes through offset of an obligation owed to the taxpayer by the taxing unit.

This act became effective June 29, 2005. (CH)

2005 Continuing Budget Authority/Revenue

S.L. 2005-144, Parts VIII and IX (HB 1630, Parts VIII and IX) conforms the repeal of the North Carolina estate tax to the repeal of the federal estate tax and extends the sunset of the additional one-half cent State sales and use tax until the date that the Current Operations and Capital Improvements Appropriations Act of 2005 becomes law, but in no event is the tax extended beyond December 31, 2005. The remaining parts of the act set out temporary year-end transitional provisions that were in effect until the passage of the 2005 Appropriations Act, extend the maturity date of certain debt of the Global Transpark Authority, and extend the sunset on retired teachers returning to the classroom.

These sections became effective June 30, 2005. (MW)

Public Finance Changes

S.L. 2005-238 (HB 1117) makes various amendments to statutes dealing with public finance. The act contains a severability clause so that if any provision of the act is found invalid, the invalidity will not affect other provisions of the act.

This act became effective August 1, 2005. (CA)

Extend Job Development Investment Grant Program and Bill Lee Act

S.L. 2005-241 (HB 1004) makes the following changes to the William S. Lee Quality Jobs and Business Expansion Act and the Job Development Investment Grant Program (JDIG):

- Extends the sunset for the Bill Lee Act and the JDIG Program, by two years, until January 1, 2008. For certain projects located in development zones, the sunset of the Bill Lee Act is extended until January 1, 2010.
- Amends and adds exceptions to the tier designation formula under the Bill Lee Act as follows:
  - Adds an exception to designate a county as a tier one area if the county's rate of unemployment was one of the ten highest in the State for the most recent 12-month period preceding the designation.
  - Amends the exception for certain small counties that have a population of less than 12,000 and that meet a certain poverty level, by requiring that the counties meet the population requirement to be designated a tier one area only.
- Amends JDIG Program so that an eligible business no longer is required to provide health insurance for all full-time employees. The eligible business must provide health insurance only to a full-time employee who earns less than $150,000 in taxable compensation annually or three and one-half times the annualized average wage for all private insured employers in the State employing between 250 and 1,000 people.

This act became effective July 29, 2005.

Section 7 of this act creates an Economic Development Oversight Committee. For additional information, see **State Government**. (MW)

Amend the Tobacco Reserve Fund to Promote the Health and Wellness of the State's Citizens and Economic Development

S.L. 2005-276, Sec. 6.12 (SB 622, Sec. 6.12) requires tobacco product manufacturers selling cigarettes to consumers in North Carolina either to participate in the Master Settlement Agreement or place into a qualified escrow account a specified amount per cigarette sold. A manufacturer that chooses to place funds into escrow may receive a refund of part of the monies placed in escrow if the amount it placed into escrow exceeds the State's allocable share of the total payment that the manufacturer would have been required to make under the Master Settlement Agreement. This section limits the refund provision by removing the market share adjustment.

This section becomes effective January 1, 2006. (CA)

Civil Penalty and Forfeiture Funds Appropriations

S.L. 2005-276, Sec. 6.37 (SB 622, Sec. 6.37) deals with civil penalty and forfeiture funds appropriations. On July 1, 2005, the North Carolina Supreme Court issued an opinion in *North Carolina School Boards Association, et al. v. Richard Moore, et al.,* a case concerning civil fines

and forfeitures. In September 2003, the Court of Appeals held that many of the monetary payments collected by certain State agencies and licensing boards could be retained by those agencies and licensing boards because the payments were remedial rather than punitive in nature and were, therefore, not governed by Article IX, Section 7 of the State Constitution. The State Constitution requires the clear proceeds of all penalties, fines, and forfeitures collected be used to maintain free public schools. The Supreme Court decision, in part, reversed the Court of Appeals and held that the following payments should be distributed under Article IX, Section 7 for the benefit of the public schools:

- Monies collected by the Department of Revenue for late filings, underpayments, and failure to comply with statutory or regulatory tax provisions.
- Monies collected by the Board of Trustees of the Consolidated University of North Carolina campuses for violation of ordinances adopted by the Trustees for the regulation of traffic and the registration of vehicles.
- Payments collected by the Employment Security Commission for overdue employer contributions, late reports, and returned checks.
- Civil penalties paid by public school systems to State agencies

Based on this Supreme Court ruling, several State agencies that had not been remitting proceeds from penalties, fines, and forfeitures to the State for allocation to public schools must now do so. This section makes several statutory changes to accomplish this result by requiring that the clear proceeds of penalties, fines, and forfeitures collected by various agencies be credited to the Civil Penalty and Forfeiture Fund. Under current law, the "clear proceeds" means the full amount of the penalty, fine, or forfeiture collected less the actual cost of collection, not to exceed 10% of the amount collected. Effective July 1, 2006, the percentage of proceeds that may be retained by an agency as its cost of collection is increased to 20%. The Office of State Budget and Management is directed to develop a methodology for computing the actual costs of collection which must apply to all State departments and agencies.

The section provides that the General Assembly must appropriate monies in the Civil Penalty and Forfeiture Fund in the budget bill each year. The appropriations must be made to the State Public School Fund. The State Board of Education must allot monies in the State Public School Fund to local school administrative units on a per pupil basis. Lastly, this section appropriates $102.5 million from the Civil Penalty and Forfeiture Fund to the State Public School Fund for fiscal year 2005-06 and $107.5 million for fiscal year 2006-07 and it appropriates $18 million from the Fund to the State Technology Fund for each fiscal year.

This section became effective July 1, 2005. For additional information, see **Education.** (CA)

LEA Sales Tax Refund Reporting

S.L. 2005-276, Sec. 7.27 (SB 622, Sec. 7.27) allows the Department of Revenue to release sales tax refund information on a per LEA basis, and it makes a corresponding change in the tax secrecy statute.

This section became effective July 1, 2005. (CA)

Redirect Refundable Sales to State Public School Fund

S.L. 2005-276, Sec. 7.51 (SB 622, Sec. 7.51) redirects estimated State sales tax revenues refundable to LEAs to the State Public School Fund for allotment through State position, dollar, and categorical allotments. The effect of this provision is to funnel all State monies for public education through the budgetary process by eliminating the State monies going directly to LEAs through the refund process. The provision accomplishes this redirection in three steps:

- It repeals the ability of individual LEAs to obtain an annual refund of the State and local sales and use tax monies paid, effective July 1, 2005, and applicable to sales

made on or after that date. LEAs have had the ability to request an annual refund of State and local sales and use taxes paid since July 1, 1998.[1] The provision also repeals the ability of school board cooperatives to obtain a refund; they have had the ability to request annual refunds since July 1, 2003.[2] The LEAs will be able to obtain a refund for sales and use taxes paid by it during the fiscal year 2004-05. The request for the refund must be made on or before December 31, 2005, and the amount will be refunded during fiscal year 2005-06.

- For fiscal year 2006-07, the provision directs the Secretary of Revenue to transfer quarterly a calculated amount from the State sales and use tax net collections to the State Public School Fund. The quarterly amount will be equal to one-fourth of the amount refunded to LEAs and school board cooperatives[3] during the 2005-06 fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use tax increased or decreased during the preceding fiscal year. The Fiscal Research Division estimates that the total amount of this annual earmarking will be $33 million.[4]
- For subsequent fiscal years, the provision directs the Secretary to transfer quarterly an amount equal to one-fourth of the amount refunded to LEAs and school board cooperatives during the preceding fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use tax increased or decreased during the preceding fiscal year.

This section became effective July 1, 2005. (CA)

Increase Funds for North Carolina Grape Growers Council

S.L. 2005-276, Sec. 11.4 (SB 622, Sec. 11.4) expands the quarterly distribution of a portion of the excise tax on wine to the North Carolina Grape Growers Council by raising the cap from $350,000 to $500,000. The General Assembly increased the cap from $175,000 to $350,000 in 2001. At that time, it was anticipated that the cap would be reached in fiscal year 2004.

This section became effective July 1, 2005. (CA)

Department of Revenue Debt Fee for Taxpayer Locater Services and Collection

S.L. 2005-276, Sec. 22.1 (SB 622, Sec. 22.1) concerns the debt fee for taxpayer locator services and collection. In 2001, the General Assembly established a system under which the cost of collecting overdue tax debts is to be borne by the delinquent taxpayers, not by the taxpayers who pay their taxes on time. The collection assistance fee is 20% of the overdue tax debt and is a receipt of the Department of Revenue (Department). The proceeds of the fee are credited to a special, non-reverting account to be used only for collecting overdue tax debts. The Department of Revenue may apply the fee proceeds to pay contractors for collecting tax debts and to pay the fee charged by the federal government for collecting tax debts by offset. The remaining proceeds of the fee may be spent for collecting overdue tax debts only pursuant to appropriation by the General Assembly. In 2004, the General Assembly enacted legislation stating that the proceeds of the fee could not be used for any purpose that is not directly and primarily related to collecting overdue tax debts. In addition to the two expenditures specifically authorized in 2001, the General Assembly added "taxpayer locater services" to the list of purposes directly and primarily

[1] S.L. 1998-212.
[2] S.L. 2003-431.
[3] S.L. 2003-345 corrected a statutory reference made in this provision of the act.
[4] This dollar amount reflects the amount of State sales and use taxes paid by LEAs, not the local sales and use taxes paid by them.

related to collecting overdue tax debts. This section adds three more purposes to which the fee proceeds may be applied:

- Postage or other delivery charges for correspondence relating to collecting overdue tax debts.
- Operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.
- Expenses of the Examination and Collection Division relating to collecting overdue tax debts.

The provision also requires the Department to account for all expenditures using accounting procedures that clearly distinguish costs allocable to collecting overdue tax debts from costs allocable to other purposes, and it must demonstrate that none of the fee proceeds are used for any purpose other than collecting overdue tax debts.

This section became effective July 1, 2005. (CA)

Property Tax Commission Per Diem

S.L. 2005-276, Sec. 22.5 (SB 622, Sec. 22.5) authorizes the Property Tax Commission (Commission) to set the salary for its members. Under prior law, the Commission members were compensated $200 a day for their work on the Commission. In the fourth edition of Senate Bill 622, this provision changed the salary of the Commission members from $200 a day to $400 a day, and it also set the salary for the chair of the Commission at $450 a day. Although the final budget act did not set the salaries at this amount, S.L. 2005-345, 'Modify 2005 Budget Appropriations Act', amended this act to appropriate additional funds to the Department of Revenue to be used to pay the increased salaries of the Commission members.

This section became effective September 1, 2005. (CA)

Collection Assistance Fee

S.L. 2005-276, Sec. 22.6 (SB 622, Sec. 22.6). Repealed by Sec. 37 of S.L. 2005-345. (CA)

Lottery

S.L. 2005-276, Part XXXI (SB 622, Part XXXI). See **State Government**.

Sales Tax Changes

S.L. 2005-276, Part XXXIII (SB 622, Part XXXIII) makes the following changes to the sales and use tax statutes:

- Continues the 1/2¢ State sales tax for two years, until July 1, 2007. The combined State and local sales tax rate is 7%: 4.5% State and 2.5% local.
- Taxes candy at the combined State and local sales tax rate of 7%, effective October 1, 2005.
- Increases the sales tax rate on satellite TV, telecommunications, and spirituous liquor from 6% to 7%, effective October 1, 2005.
- Eliminates special sales tax rates and caps, effective January 1, 2006.
- Imposes a 7% sales tax on cable services, with a credit for local franchise tax paid, effective January 1, 2006.
- Imposes the same sales tax rate on transmission lines used for telecommunication and cable services, effective January 1, 2006.

Except as otherwise noted, this part became effective July 1, 2005. (CA)

Tobacco Rate Changes

S.L. 2005-276, Part XXXIV (SB 622, Part XXXIV) increases the tax rate on tobacco products as follows:

- It increases the tax on cigarettes 25¢, for a total tax rate of 30¢ a pack, effective September 1, 2005.
- It increases the tax on cigarettes an additional 5¢, for a total tax rate of 35¢ a pack, effective July 1, 2006.
- It increases the tax rate on other tobacco products from 2% to 3% of the cost price, effective September 1, 2005.
- It allows a tobacco product manufacturer that elects to place funds into escrow to assign those funds to the State.

Except as otherwise noted, this part became effective July 1, 2005. (CA)

Internal Revenue Code Update

S.L. 2005-276, Part XXXV (SB 622, Part XXXV) changed the State tax law reference to the Internal Revenue Code from May 1, 2004, to January 1, 2005. The change in the reference date incorporated federal changes made in the Working Families Tax Relief Act of 2004 (P.L. 108-311) and the American Jobs Creation Act of 2004 (P.L. 108-357). However, this part does not conform to three aspects of the federal tax law changes. In addition, in early 2005, Congress passed legislation to enhance the tax benefit for certain charitable contributions made in January 2005, for tsunami relief (P.L. 109-1). That legislation did not amend the Code, but rather used uncodified language to bring about that result. This part conforms to that legislation.

This part became effective July 1, 2005. (CA)

Individual Income Tax Changes

S.L. 2005-276, Part XXXVI (SB 622, Part XXXVI) extends the 8.25% upper-income individual income tax rate for two more taxable years: 2006 and 2007.

This part became effective July 1, 2005. (CA)

Corporate, Excise, and Insurance Changes

S.L. 2005-276, Part XXXVIII (SB 622, Part XXXVIII) taxes health maintenance organizations (HMOs) at the general gross premiums tax rate of 1.9% and repeals the special 1% rate for HMOs.

This part became effective July 1, 2005, and applies to taxable years beginning January 1, 2007. (CA)

Tax Incentives/Film Industry Jobs Incentives

S.L. 2005-276, Part XXXIX (SB 622, Part XXXIX) provides a refundable income tax credit equal to 15% of the production expenses for film and television production companies that spend at least $250,000 in North Carolina in connection with certain productions. The credit sunsets for qualifying expenses occurring on or after January 1, 2010.

This part became effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005. (CA)

Fire Service District Tax Rate

S.L. 2005-281, Sec. 1 (SB 32, Sec. 1) allows county commissioners, by resolution, to remove an area from an existing fire protection service district and simultaneously establish and place the area in a new service district if the area meets all of the following conditions:

- It is an industrial facility.
- It is subject to a contract not to annex by a municipality under which the owner of the property is obligated to make payments in lieu of taxes equal to or in excess of 50% of the taxes the industry would pay to the municipality if it were annexed.
- The owner of the property is currently making payments in lieu of taxes to a municipality.
- The property is actively served by an industrial fire brigade.

The rate of tax in a district created under this new statutory section is limited to 3.5¢ on each $100 of property valuation subject to taxation. If an area ceases to meet the requirements of this new statutory section, then the board of commissioners may, by resolution, abolish the district and annex the territory back to the district from which it was removed.

This section became effective August 18, 2005.

The act also allows members of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund to terminate membership in the fund at any time, and provides that delinquent payments alone do not terminate membership. For more information, see **Retirement.** (BK)

Present Use Value Buyout Credits

S.L. 2005-293 (HB 705) allows payments received under the tobacco quota buyout program to be counted towards the $1,000 income requirement, which must be met before agricultural land can be assessed at present-use value for property tax purposes.

This act became effective for taxes imposed for taxable years beginning on or after July 1, 2005. (CH)

Property Tax Paid with Vehicle Registration

S.L. 2005-294 (HB 1779) modifies the collection system for property taxes and registration fees on motor vehicles in the State as follows:

- Beginning July 1, 2009, or when an integrated computer system is in operation, whichever occurs first, the current system of paying the property taxes and registration fees to different entities on different dates would be replaced with a combined system in which the property taxes and registration fees on the motor vehicle are paid to the same entity on the same date.
- Beginning January 1, 2006, the interest rate on unpaid property taxes on motor vehicles increases from 2% in the first month following the date the taxes were due to 5%. A portion (60%) of the interest collected will be transferred to a special account in the Treasurer's Office for the purpose of developing an integrated computer system in the Department of Motor Vehicles (DMV) that would allow for the implementation of the combined system.
- The Property Tax Division within the Department of Revenue and the DMV within the Department of Transportation will jointly study and develop a plan for determining the valuation of vehicles to be taxed and for implementing the integrated computer system.

Except as otherwise noted, this act became effective August 22, 2005. (CA)

Property Tax – Value of Motor Vehicles

S.L. 2005-303 (HB 988) provides that when a tax assessor considers the sales price of a motor vehicle in determining the true value of the vehicle for property tax purposes, the assessor may not consider the highway use tax as part of the sales price.

This act became effective for taxed imposed for taxable years beginning on or after July 1, 2005. (CH)

Property Tax Changes

S.L. 2005-313 (HB 116) makes clarifying and technical changes to the present-use value statutes, clarifies the tax year for motor vehicles that are to be switched from an annual system of registration to a staggered system, and imposes a penalty for nonpayment of property taxes on an electronic funds transfer that cannot be completed because of insufficient funds.

The changes made by the act to the motor vehicle property tax statutes became effective January 1, 2006. The other provisions are effective for taxes imposed for taxable years beginning on or after July 1, 2005. (CA)

University of North Carolina Nonappropriated Capital Projects

S.L. 2005-324 (HB 1775) authorizes the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds. No funds from the General Fund will be appropriated to finance the projects.

This act became effective August 26, 2005. (BK)

Add Agencies to Set-Off Debt Collection

S.L. 2005-326 (SB 682) adds public health authorities, metropolitan sewerage districts, and sanitary districts to the list of agencies authorized under the Setoff Debt Collection Act to collect debts owed to them by obtaining a setoff against a debtor's North Carolina income tax refund.

This act becomes effective January 1, 2006, and applies to income tax refunds determined on or after that date. (CH)

Notary Fee Increase

S.L. 2005-328 (HB 1217) increases the maximum fees that a notary public may charge from $3 to $4. This increase applies to acknowledgements, oaths or affirmations without a verification or proof, and verifications or proofs.

This act became effective August 26, 2005. (BK)

North Carolina State Lottery Act

S.L. 2005-344 (HB 1023). See **State Government**.

Budget Technical Corrections

S.L. 2005-345, Sec. 2 (HB 320, Sec. 2) corrects an incorrect statutory reference in the severability clause of the allocable share provision.

This section becomes effective January 1, 2006. (CA)

Budget Technical Corrections

S.L. 2005-345, Sec. 7 (HB 320, Sec. 7) corrects an incorrect statutory reference in the budget provision that redirects sales tax refunds from the local school administrative units to the State Public School Fund.

This section became effective July 1, 2005. (CA)

Budget Technical Corrections

S.L. 2005-345, Sec. 36 (HB 320, Sec. 36) allocates funds appropriated to the Department of Revenue to be used to pay the increased salaries of the Property Tax Commission members. It allocates $19,700 for fiscal year 2005-06 and $43,000 for fiscal year 2006-07.

This section became effective July 1, 2005. (CA)

Budget Technical Corrections

S.L. 2005-345, Sec. 37 (HB 320, Sec. 37) repeals the change to the collection assistance fee collected by the Department of Revenue on overdue tax debts.

This section became effective July 1, 2005. (CA)

Budget Technical Corrections

S.L. 2005-345, Sec. 46 (HB 320, Sec. 46) increases the amount of tax liability a taxpayer may designate to the North Carolina Political Parties Financing Fund from $1 to $3 for a single taxpayer and from $2 to $6 for a married couple filing a joint return.

This section is effective for taxable years beginning on or after January 1, 2006. (CA)

Budget Technical Corrections

S.L. 2005-345, Sec. 47 (HB 320, Sec. 47) amends Part XXXIX of the Current Operations and Capital Improvements Appropriations Act of 2005 which enacted an income tax credit for qualifying expenses of a production company. The credit is not allowed for sporting events. Questions arose as to what is a sporting event. This section changes the terminology to more accurately reflect the intent of the original bill. It specifies that the credit is not allowed for a **live** sporting event and defines that term as a scheduled sporting competition, game, or race that is not originated by a production company.

This section is effective for taxable years beginning on or after January 1, 2005, and applies to qualifying expenses incurred on or after July 1, 2005. (CA)

Amend Eastern Region Board

S.L. 2005-364 (SB 606) updates the statutes to reflect the change in name of the Global TransPark Development Zone and the Global TransPark Development Commission to North

Carolina's Eastern Region and North Carolina's Eastern Region Development Commission respectively. It also clarifies the authority of the Commission to promote travel and tourism, and natural resource-based attractions, within the region. The act also specifies that the Commission's members must be appointed in the following way: (1) one member appointed by the board of commissioners of each county, after the commissioners have consulted with the county's business community; and (2) two members each appointed by the Speaker of the House, the President Pro Tempore of the Senate, and the Governor. Of this group of six, no two may be residents of the same county, none may be chair or vice chair, and all serve initial two-year terms. The Governor, the Speaker of the House, and President Pro Tempore of the Senate must consult to assist in achieving geographic diversity in these six. Of the members appointed by the commissioners of the counties, three (chosen by lot) are to serve initial two-year terms and the remainder must serve four-year terms. Terms of existing members of the Global TransPark Development Commission are to terminate September 30, 2005, and the terms of the new board members begin October 1.

This act became effective October 1, 2005. (BK)

Fuel Tax Refund for Pumpers and Sweepers

S.L. 2005-377 (SB 356) adds the following two vehicles to the list of vehicles that are allowed an annual refund of the motor fuel and alternative fuel taxes paid on fuel consumed by the vehicles:

- A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is paid to the North Carolina Department of Environment and Natural Resources under G.S. 130A-291.1 (Septage management program; permit fees).
- A sweeper.

The annual refund of the fuel taxes is based on 33 1/3% of fuel consumed by the vehicle.

This act became effective September 8, 2005, and applies to motor fuel and alternative fuel consumed on or after January 1, 2006. (MW)

GARVEE Bond Issuance

S.L. 2005-403 (HB 254) does two things:

- It authorizes the use of GARVEE bonds (Grant Anticipation Revenue Vehicles) to finance projects in the Intrastate Highway System and the Transportation Improvement Program, effective February 1, 2006.
- It modifies the definition of "governmental unit" for purposes of interest rate swap agreements to mirror the language in the statute authorizing swap agreements.

Except as otherwise noted in the summary, this act became effective September 20, 2005. (CA)

Bill Lee/Excise Tax Refund

S.L. 2005-406 (SB 868) does two things. It:

- Provides an exception to the tier designation formula under Article 3A of Chapter 105 of the General Statutes (the William S. Lee Quality Jobs and Business Expansion Act), by allowing certain industrial parks located in higher-tiered counties to be treated as if they were located in an enterprise tier one area if the parks meet conditions related to government ownership, size, population of the counties, and Medicaid eligibility within the counties. This part of the act becomes effective for taxable years beginning on or after January 1, 2005.

- Gives tobacco products dealers a refund of the excise tax paid on stale or otherwise unsalable cigars returned to the manufacturer.

Except as otherwise noted in the summary, this act became effective September 1, 2005. (MW)

Tax Increment Financing Changes

S.L. 2005-407 (SB 528) allows a municipality to use project development financing for a tourism-related development project located outside of its central business district if the project is located in an enterprise tier one area.

This act became effective September 20, 2005. (CA)

Energy Credit Banking/Selling Program/Fund

S.L. 2005-413, Secs. 4 and 5 (SB 1149, Secs. 4 and 5) extend and expand the tax credit for investing in renewable energy property as follows. They:

- Expand the definition of renewable energy property in G.S. 105-129.15(7) to include any biomass equipment that uses renewable biomass resources for commercial thermal or electrical generation, and expand the definition of renewable biomass resources in G.S. 105-129.15(6) to include spent pulping liquor.
- Increase the ceiling on the tax credit for placing renewable energy property in service for nonresidential property from $250,000 to $2.5 million.
- Include pool heating in the residential property ceiling for solar energy equipment.
- Extend the sunset on the tax credit for investing in renewable energy property from January 1, 2006, to January 1, 2011.

These sections become effective for taxable years beginning on or after January 1, 2006. For more information on how this act allows an energy credit banking and selling program, see **Environment and Natural Resources.** (MW)

Economic Development/Public Records

S.L. 2005-429 (SB 393) requires the Department of Revenue to annually publish a list, itemized by taxpayer, disclosing information about certain tax incentives. In addition, the act clarifies that public records created with respect to a proposed location or expansion of a specific business or industrial project must be released once the project has been announced, that certain types of information are public records, and that an agency must notify applicants for and recipients of economic development incentives about public records requirements.

The annual reporting required by the Department of Revenue becomes effective January 1, 2007. The remainder of this act became effective September 22, 2005. (CA)

Motor Fuel Tax Changes and Revenue Laws Technical Changes

S.L. 2005-435 (HB 105) makes numerous changes to the motor fuels tax laws as recommended by the Revenue Laws Study Committee, makes technical and clarifying changes to the revenue laws, and allows for a refund of sales and use taxes paid on the following aviation fuel purchased on or after January 1, 2005, but before January 1, 2007:

- Allows for a refund of any amount of sales and use taxes paid by an interstate passenger air carrier on aviation fuel that exceeds $2.5 million.
- Allows for a refund of sales and use taxes on aviation fuel paid by a motorsports racing team or motorsports sanctioning body. In order to qualify for the refund, the

fuel must have been used to travel to or from a motorsports event in this State, from this State to a motorsports event in another state, or to this State from a motorsports event in another state. For the purposes of the refund, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing.

This act became effective September 27, 2005. (CH)

2004 Extra Session

Computer Manufacturing Tax Incentives

S.L. 2004-204 (SB 2, 2004 Extra Session on Economic Development Issues). The act provides the following income, franchise, and sales tax incentives for a computer manufacturing facility that, along with related parties and strategic partners, is expected to invest at least $100 million of private funds in a facility in the State over a five-year period and employ at least 1,200 people within five years after the facility is used as a computer manufacturing and distribution facility:

- A new tax credit based upon the unit output and employment level of a major computer manufacturing and distribution facility. This credit may be used to eliminate 100% of a taxpayer's income and franchise tax liability. Any unused portion of the credit may be carried forward for the next succeeding 25 years.
- Enhanced Bill Lee Act tax credits that entitle a taxpayer to claim the credit amounts allowed for facilities located in a tier one county regardless of the county in which the facility is located. The act also provides that the wage standard does not apply to the activities of a taxpayer at a major computer facility.
- An expansion of the sales tax refund, enacted by the 2003 General Assembly[5], for building materials purchased to build a computer manufacturing facility.

The sales tax refund provision became effective January 1, 2005, and applies to sales made on or after that date. The remainder of the act became effective for business activities occurring on or after November 1, 2004, and for taxable years beginning on or after January 1, 2005. (CA)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

[5] S.L. 2003-435

Chapter 12
Health and Human Services

Shawn Parker (SP) and Ben Popkin (BP)

Enacted Legislation

Smoking in Public Places/Local Health Departments

S.L. 2005-19 (HB 239) exempts local health departments and the buildings and grounds of the departments from current laws governing smoking restrictions. This allows a local health department to ban smoking from the department itself, the building in which it is located, and the entirety of its grounds (defined as all areas within 50 feet of the department).

This act became effective April 28, 2005. (BP)

Extend Sunset/Animal Disease Prevention

S.L. 2005-21 (SB 210). See **Agriculture and Wildlife**.

Student Asthma Conditions

S.L. 2005-22 (HB 496). See **Education**.

Establish Child Assessment Responses

S.L. 2005-55, Sec. 13 (HB 277, Sec. 13) requires the Department of Health and Human Services to continue to assess the alternative response system of child protection. The Department must report the status of its evaluation to the Legislative Study Commission on Children and Youth, 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 before the convening of the 2006 Regular Session of the 2005 General Assembly (May 9, 2006).

This section became effective October 1, 2005.

Sections 1-12 amend the statutes concerning family assessment responses. For additional information, see **Children and Families**. (BP)

Public Hospital Amendments/Extend Deadline Specially Impacted Adult Housing Facilities

S.L. 2005-70 (HB 869) clarifies for contracts or proposed contracts for materials or services to be furnished or used in connection with any hospital facility, that only employees and the spouses of those employees involved in the making or awarding of the contract or proposed contract are prohibited from having a financial interest in the contract. The act allows the chief of medical staff or the immediate past president of the medical staff to serve on the hospital board of trustees as an ex-officio representative, if the hospital had by-laws providing for such representation prior to January 1, 2005.

The act extends deadlines for "specially impacted adult housing facilities" to comply with requirements for exemption from general prohibition on the creation of new beds in an adult care home. The specially impacted facilities are those located in a downtown area that is being

renovated due to an economic development project. Specifically, deadlines are changed from June 1, 2005, to June 1, 2006, and from December 1, 2005, to December 1, 2006.

This act became effective May 31, 2005. (SP)

Hemophilia Drugs/Extend Sunset on Prior Authorization

S.L. 2005-83 (HB 916) extends the sunset from the law exempting antihemophiliac factor drugs from prior authorization requirements established by the Department of Health and Human Services under the Medicaid program from July 1, 2006, to July 1, 2009.

This act became effective July 1, 2005. (SP)

Involuntary Commitment Affidavit

S.L. 2005-135 (HB 1199) amends the involuntary commitment statutes to authorize physicians or eligible psychologists to file affidavits in support of petitions for issuance of custody orders for examination and possible involuntary commitment by either delivering the original affidavit to the clerk or magistrate or by sending the affidavit by facsimile transmission. The act requires that when an affidavit is filed by facsimile, the original affidavit corresponding to the facsimile transmission must be mailed to the clerk or magistrate within five days of the facsimile transmission for filing with the facsimile copy.

This act became effective June 29, 2005. (BP)

Smoking in Public Places/Local Health Departments/ Departments of Social Services

S.L. 2005-168 (HB 1482) adds local departments of social services to the list of facilities exempted from current laws governing smoking restrictions (as amended by S.L. 2005-19, which added local health departments). A local department of social services now may ban smoking from the department itself, the building in which it is located and the entirety of its grounds, defined as all areas within 50 feet of the department.

This act became effective July 7, 2005. (BP)

Amend Assault Assistance Animal

S.L. 2005-184 (SB 1058). See **Criminal Law and Procedure**.

Animal Exhibition Sanitation/Aedin's Law

S.L. 2005-191 (SB 268). See **Agriculture and Wildlife**.

North Carolina Uniform Trust Code

S.L. 2005-192, Sec. 3 (SB 679, Sec. 3) amends North Carolina trust law by enacting the North Carolina Community Trust for Persons with Severe Chronic Disabilities Act. The Act authorizes the creation of community trusts to permit the pooling of resources contributed by families or philanthropists for the use and benefit of designated persons with severe chronic disabilities.

This section becomes effective January 1, 2006. (BP)

Residential Schools Like Other Public Schools

S.L. 2005-195 (SB 630). See **Education**.

Health Insurance Changes

S.L. 2005-223 (HB 737). See **Insurance**.

Health Insurance Portability and Accountability Act Compliance and Fairness

S.L. 2005-224 (SB 626). See **Insurance**.

Indoor Arena Smoking Regulations

S.L. 2005-239 (SB 482) adds indoor arenas with a seating capacity greater than 23,000 to a list of facilities exempt from the provisions regulating smoking in public places. The act permits officials for such facilities to prohibit smoking within the facility.

This act became effective July 29, 2005. (SP)

Child Nutrition Standards

S.L. 2005-253 (SB 961). See **Education**.

Collaboration among Departments of Administration, Health and Human Services, Juvenile Justice and Delinquency Prevention, and Public Instruction on School Based Child and Family Team Initiative

S.L. 2005-276, Sec. 6.24 (SB 622, Sec. 6.24). See **Children and Families**.

Office of Policy and Planning

S.L. 2005-276, Sec. 10.2 (SB 622, Sec. 10.2) requires the Secretary of Health and Human Services to establish an Office of Policy and Planning from existing resources across the Department to promote coordinated policy development and strategic planning for the State's health and human services systems. The Director of the Office of Policy and Planning will report directly to the Secretary and will have the following responsibilities:

- Coordinating the development of departmental policies, plans, and rules, in consultation with the Divisions of the Department.
- Establishing a process for the development and implementation of new policies, plans, and rules.
- Establishing a departmental process for the review of existing policies, plans, and rules, to ensure that departmental policies, plans, and rules, are relevant.
- Coordinating and reviewing all departmental policies before dissemination to ensure that all policies are well coordinated within and across all programs.

- Implementing ongoing strategic planning that integrates budget, personnel, and resources with the mission and operational goals of the Department.
- Reviewing, disseminating, monitoring, and evaluating best practice models.

This section became effective July 1, 2005. (SP)

Liability Insurance

S.L. 2005-276, Sec. 10.7 (SB 622, Sec. 10.7). See **State Government**.

Department of Health and Human Services Payroll Deduction for Child Care Services

S.L. 2005-276, Sec. 10.8 (SB 622, Sec. 10.8). See **Labor and Employment**.

Expand Community Care of North Carolina Management to Additional Medicaid Recipients

S.L. 2005-276, Sec. 10.17 (SB 622, Sec. 10.17) directs the Department of Health and Human Services to expand the scope of the Community Care of North Carolina management model to apply to Medicaid and dually eligible individuals with chronic conditions and long-term care needs. The Department will conduct community-wide pilot programs and expand successful models for statewide application. The Department will review the impact of this expansion and report its findings to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2007.

This act became effective July 1, 2005. (BP)

Ticket to Work/Medicaid Eligibility

S.L. 2005-276, Sec. 10.18 (SB 622, Sec. 10.18) creates the Health Coverage for Workers with Disabilities Act, directing the Department of Health and Human Services to implement a Medicaid buy-in eligibility category to enable certain adults with disabilities to participate in the State Medical Assistance Program. Individuals meeting Social Security Disability criteria who are engaged in "substantial and reasonable work effort" and fall within set income eligibility thresholds may enroll in the Health Coverage for Disabled Workers plan at either no or low cost. Those with higher incomes will pay an annual enrollment fee (if income is over 150% of the federal poverty level) and monthly premiums (if income is over 200% of the federal poverty level), according to a sliding scale based on the worker's income.

This section became effective July 1, 2005. The section calling for implementation of the act will become effective the latter of either January 1, 2007, or within 30 days of the Medicaid Management Information System becoming operational, as determined by the Department. (BP)

Verification of State Residency for Medical Assistance

S.L. 2005-276, Sec. 10.21A (SB 622, Sec. 10.21A) requires applicants for medical assistance benefits to prove that they are North Carolina residents. The Division of Medical Assistance will not pay for any medical assistance provided to an applicant unless they have met the proof of residency requirements.

This section becomes effective January 1, 2006. (BP)

Medicaid Estate Recovery to Include Liens on Real Property

S.L. 2005-276, Sec. 10.21C (SB 622, Sec. 10.21C) amends the Medicaid Estate Recovery Plan (Plan) by making the following changes to the Plan:

- Includes an expanded, detailed list of Medicaid services subject to estate recovery.
- Specifically authorizes the Department of Health and Human Services (Department) to impose liens on real property. Liens may be placed on property before a Medicaid recipient's death if it has been determined that the recipient "cannot reasonably be expected to be discharged and return home."
- Directs the Department to waive claims or liens against assets valued at less than $5,000 or for services and benefits valued less than $8,000.
- Allows the Department to postpone or waive estate recovery in cases of undue hardship to a recipient's heir or beneficiary. Undue hardship exists in the following situations:
  - The property subject to the lien has a tax value of less than $30,000.
  - The property is the sole source of income for the heir or beneficiary and losing the property would drop his or her income to below 100% of the federal poverty level.
  - The heir or beneficiary resided continuously in the home for at least the 24 months preceding the recipient's death, has an income no more than 150% of the federal poverty level, owns no other real property, and owns no more than $30,000 in other assets.

This section becomes effective January 1, 2006, and applies to recipients of medical assistance on or after that date. (BP)

NC Health Choice

S.L. 2005-276, Sec. 10.22 (SB 622, Sec. 10.22) authorizes the Department of Health and Human Services to allow enrollment in the NC Health Choice program to grow by up to 3% every six months. This section amends State Social Services law by changing the age range of enrollees from all children under 19 to those children between the ages of 6 through 18. The act directs the Department to provide services to children enrolled in NC Health Choice through Community Care of North Carolina and to pay Community Care providers pursuant to Medicaid guidelines. The act also modifies payments to health care providers, implementing progressively reduced payment rates for services rendered, as follows:

- Effective when law – prescription drug providers will accept payment for outpatient prescriptions in the amount allowable under Medicaid.
- Effective when law – providers of services to enrollees will accept the maximum allowable charge under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan, less any co-payment assessed.
- Effective no later than January 1, 2006 – rates for services provided to enrollees will be the equivalent of 115% of Medicaid rates, less any co-payment assessed.
- Effective July 1, 2006 – payment for services provided to enrollees will be paid at 100% of the Medicaid rate, less any co-payment assessed.

Except as otherwise noted, this section became effective July 1, 2005. (BP)

Long-Term Plan for Meeting Mental Health/Developmental Disabilities/Substance Abuse Services Needs

S.L. 2005-276, Sec. 10.24 (SB 622 Sec. 10.24) directs the Secretary of the Department of Health and Human Services in consultation with interested advocacy groups and affected State and local agencies to develop a long-range plan for addressing the mental health, developmental

disabilities, and substance abuse services needs of the State. The plan must be consistent with G.S. 122C-102 and must address the following:

- The services needed at the community level within each Local Management Entity (LME) in order to ensure an adequate level of services to the average number of persons needing the services based on population projections.
- The full continuum of services needed for each disability group within an LME, including:
  - Which services could be regional or multi-LME based
  - What percent of the population each LME would expect to use State-level facilities
  - An inventory of existing services within each LME for each disability group, and the gaps that exist
- Projected growth in services for each disability group within each LME or region that can reasonably be managed over the ensuing five-year period.
- Projected start-up costs and the total funding needed in each year from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs to implement the long-range plan.

This section became effective July 1, 2005. (SP)

Comprehensive Treatment Services Program

S.L. 2005-276, Sec. 10.25 (SB 622, Sec. 10.25) directs the Department of Health and Human Services, in consultation with the Department of Juvenile Justice and Delinquency Prevention, the Department of Public Instruction, and other affected State agencies, to continue the Comprehensive Treatment Services Program (Program) for children at risk for institutionalization or other out-of-home placement. The act sets forth guiding principles for the provision of services and identifies specific approaches to be used by the State agencies involved. Prior to the allocation of any funds for Program services, the Department will enter into a Memorandum of Agreement with the affected State agencies and local entities (departments of social services, area mental health programs, local education agencies, etc.) identifying each party's specific role and responsibility in implementing the Program.

The act establishes a temporary children's services work group that will meet monthly to study a range of issues related to improving coordination and collaboration between child-serving agencies in the State. The work group will deliver reports of its findings and recommendations to the Coordination of Children's Services Study Commission and will expire upon the filing of its final report. The Coordination of Children's Services Study Commission is a standing Commission created by the act and is charged with studying and recommending changes to improve collaboration and coordination among State and local agencies that provide services to children, youth, and families with multiple service needs.

This section became effective July 1, 2005. (BP)

Services to Multiply Diagnosed Adults

S.L. 2005-176, Sec. 10.26 (SB 622, Sec. 10.26) directs the Division of Mental Health, Developmental Disabilities and Substance Abuse Services within the Department of Health and Human Services (Department) to provide those treatment services that are medically necessary, to implement utilization review of services provided, and to implement guiding principles for the provision of services to multiply-diagnosed adults including:

- The service delivery system must be outcome-oriented and evaluation-based.
- Services should be delivered as close as possible to the consumer's home.
- Services selected should be those that are most efficient in terms of cost and effectiveness.

- Services should not be provided solely for the convenience of the provider or the client.
- Families and consumers should be involved in decision making throughout treatment planning and delivery.

The section further directs the Department to implement the following cost-reduction strategies: preauthorization for all services except emergency services, criteria for determining medical necessity, and clinically appropriate services. The section also prohibits the use of State funds to purchase single-family or other residential dwellings to house multiply-diagnosed adults.

The Department must submit a progress report on implementation of this section not later than May 1, 2006, and a final report not later than May 1, 2007, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2005. (SP)

Transition Planning for State Psychiatric Hospitals

S.L. 2005-276, Sec. 10.28 (SB 622, Sec. 10.28) requires the Department of Health and Human Services (Department) to continue to implement a plan for the transition of patients from State psychiatric hospitals to the community or to other long-term care facilities. Patients and their families should receive necessary services based on the following principles:

- Individuals must receive acute psychiatric care in non-State facilities when appropriate.
- Individuals must be provided acute psychiatric care in State facilities only when non-State facilities are unavailable.
- Individuals must receive evidenced-based psychiatric services that are cost efficient.
- The State must minimize cost shifting to other State and local facilities or institutions.

The Department must conduct an analysis of individual patient service needs and must develop an individual transition plan for patients in each hospital. In developing each plan, the Department must consult with the patient and the patient's family or other legal representative.

Any nonrecurring savings in State appropriations that result from reductions in beds or services must be placed in the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. Recurring savings realized through implementation of this section must be retained by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. These provisions seek to comply with the United States Supreme Court decision *Olmstead vs. L.C. & E.W.*

The Department must submit two reports on the status of implementation of this section to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on December 1, 2005, and May 1, 2006.

This section became effective July 1, 2005. (BK)

Mental Retardation Center Downsizing

S.L. 2005-276, Sec. 10.29 (SB 622, Sec. 10.29) requires the Department of Health and Human Services (Department) to ensure that the downsizing of the State's regional mental retardation facilities is continuously based on residents' needs and the availability of community-based services with a targeted goal of 4% each year. The Department must implement cost-containment and reduction strategies to ensure the corresponding financial and staff downsizing of each facility. The corresponding budgets for each of the State mental retardation centers must

be reduced, and positions must be eliminated as the census of each facility decreases. Mental retardation center positions may not be transferred to other units within a facility or assigned nondirect care activities such as outreach.

This section also explains how the Department must apply savings that result from reductions in beds or services. The Secretary of Health and Human Services must develop a plan to ensure that there are sufficient developmental disability/mental retardation regional centers to correspond with service catchment areas. It must report on the development of the plan not later than April 1, 2006, and it must report the final plan, including recommendations for legislative action, 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 not later than April 1, 2007.

The Department must report on its progress in complying with this section to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The Department must submit the progress report no later than January 15, 2006, and submit a final report no later than May 1, 2006.

This section became effective July 1, 2005. (BK)

Private Agency Uniform Cost-Finding Requirement

S.L. 2005-276, Sec. 10.30 (SB 622, Sec. 10.30) allows the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services within the Department of Health and Human Services (Department) to require private agencies under contract with area or county programs for the provision of certain services to complete agency-wide uniform cost findings. Failure to do so to the satisfaction of the controller's office of the Department will allow the Department to suspend all funding and payments to the private agency until an acceptable cost finding has been completed.

This section became effective July 1, 2005. (BP)

Department of Health and Human Services Policies and Procedures in Delivering Community Mental Health, Developmental Disabilities, and Substance Abuse Services

S.L. 2005-276, Sec. 10.31 (SB 622, Sec. 10.31) directs the Department of Health and Human Services (Department), Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with area mental health authorities and county programs, to identify and eliminate administrative and fiscal barriers created by existing State and local policies and procedures in the delivery of community-based mental health, developmental disabilities, and substance abuse services provided through the area programs and county programs. The Department must implement changes in policies and procedures in order to facilitate the following:

- The provision of services to adults and children as defined in the Mental Health System Reform State Plan as priority or targeted populations.
- A revised system of allocating State and federal funds to area mental health authorities and county programs that reflects projected needs, including the impact of system reform efforts rather than historical allocation practices and spending patterns.
- The provision of services to children deemed not eligible for the Comprehensive Treatment Services Program for Children, but who would otherwise be in need of medically necessary treatment services to prevent out-of-home placement.

- The provision of services in the community to adults remaining in and being placed in State institutions addressed in *Olmstead v. L.C.*

This section became effective July 1, 2005. (SP)

Conflict of Interest in Referrals to Provider Agencies

S.L. 2005-276, Sec. 10.33 (SB 622, Sec. 10.33) expands the powers and duties of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to include the provision of requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety when adopting rules applicable to facilities licensed in Article 1 of Chapter 122C of the General Statutes.

This section became effective July 1, 2005. (SP)

Appeals Process for Clients of Mental Health/Developmental Disabilities/Substance Abuse Services Programs

S.L. 2005-276, Sec. 10.35 (SB 622, Sec. 10.35) authorizes the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules establishing a process for non-Medicaid eligible clients to appeal decisions made by an area authority or county program affecting the client to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Commission is required to commence the rule making process in a timely manner to ensure rules become effective by July 1, 2006.

This section became effective July 1, 2005. (SP)

North Carolina Controlled Substances Reporting System Act

S.L. 2005-276, Sec. 10.36 (SB 622, Sec. 10.36) directs the Department of Health and Human Services to establish and maintain a reporting system for all Schedule II through V controlled substances. The Commission for Mental Health, Development Disabilities, and Substance Abuse Services must approve rules to implement this section including reporting content, transmission methods, and frequency. Exempt from reporting requirements are hospitals or long-term care pharmacies, persons authorized to administer the substances pursuant to Chapter 90 of the General Statutes, and wholesale distributors of controlled substances. Prescription information submitted to the Department is confidential and not public record subject to specific exceptions.

This section becomes effective January 1, 2006. (SP)

Licensure of Residential Treatment Facilities

S.L. 2005-276, Sec. 10.40 (SB 622, Sec. 10.40) requires new residential treatment facilities to include a letter of support from the local management entity in whose catchment area the facility will be located with the facility's application for licensure by the Department of Health and Human Services. This requirement applies to all pending license applications and to all applications submitted on or after the effective date of this act.

This section became effective July 1, 2005, and applies to license applications pending and license applications submitted on or after that date. (BP)

Regulatory Changes to Improve Quality and Safety in Home Care Services, Mental Health Facilities, Adult Care Homes, and Certain Hospital Facilities.

S.L. 2005-276, Sec. 10.40A(a)-(h) (SB 622, Sec. 10.40A(a)-(h)) amends State law regarding the "Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, and Substance Abusers." The act amends inspection and licensure practices and doubles the civil penalties that may be assessed for violations. Inspections will be conducted annually for residential facilities and every two years for licensable facilities. License periods are shortened – initial licensure may not exceed 15 months and is renewed on an annual basis thereafter. One time provisional licenses of no more than six months duration may be issued to allow facilities to demonstrate substantial compliance, either when they are initially licensed or in cases where they have fallen out of compliance and the noncompliance poses no "immediate threat to the health and safety of the individuals in the licensable facility." Additionally, facilities not serving clients for a 12-month period are not eligible for renewed licensure.

This section became effective July 1, 2005. (BP)

Authorization for Health Care Facilities to Remain in Operation Under Certain Circumstances

S.L. 2005-276, Sec. 10.40B (SB 622, Sec. 10.40B) provides that notwithstanding contrary statutory provisions, a licensed health care facility in operation on July 1, 2005, under a certificate of need issued by the Department of Health and Human Services (Department) prior to that date and subsequently invalidated based on a procedural defect in the awarding of the certificate of need, may remain in operation for the purpose of applying for a new certificate of need in accordance with Article 9 of Chapter 131E of the General Statutes. The health care facility may remain in operation for the period pending the decision of the Department on the application for the new certificate of need.

This section became effective July 1, 2005, and expires 30 days from the date of the Department's decision on the new certificate of need or adjournment *sine die* of the 2005 General Assembly, whichever occurs later. (BK)

Early Intervention Program Rules Adopted by Commission for Health Services

S.L. 2005-276, Sec. 10.54A (SB 622, Sec. 10.54A) transfers rule-making authority for the birth–three-year-old early intervention program through Part C of the Individuals with Disabilities Act from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to the Commission for Health Services.

This section became effective July 1, 2005. (SP)

Chronic Disease Prevention Activities Inventory

S.L. 2005-276, Sec. 10.56 (SB 622, Sec. 10.56) directs the Department of Health and Human Services to create an inventory of all chronic disease prevention activities, funding, staffing, and other resources for these activities. The inventory will include at the minimum the following chronic diseases:

- Heart disease
- Stroke
- Diabetes

- Osteoporosis
- Cancer

The Department is directed to create a plan to combine task forces and activities and explore collapsing these activities into the Healthy Carolinians structure.

This section became effective July 1, 2005. (SP)

Governor's Vision Care Program Established

S.L. 2005-276, Sec. 10.59F (SB 622, Sec. 10.59F) creates the Governor's Vision Care Program (Program) to provide funds for early detection and correction of vision problems in eligible children enrolled in public schools in grades K through 3. The funds will be allocated to reimburse optometrists and ophthalmologists for providing required comprehensive eye exams and necessary spectacles to children meeting the Program's income and coverage-based eligibility criteria. The act creates the Governor's Commission on Early Childhood Vision Care (Commission) to implement and administer the Program and to pursue alternative means for providing services once Program funds have been exhausted.

The section amends state public health law to require all children entering kindergarten in the public schools to obtain a comprehensive eye examination no sooner than 6 months before the date of school entry and no later than 60 days after school entry. Pursuant to provisions of the act, "[n]o child shall attend kindergarten unless a comprehensive eye examination transmittal form…indicating that the child has received the comprehensive eye examination required…is presented to the school principal…" Principals are directed to notify the Commission of children failing to satisfy this requirement so that the Commission may identify alternative ways to provide services to these children.

The Governor's Vision Care Program requirements do not apply to children entering kindergarten in private church schools, schools of religious charter, or certain qualified nonpublic schools.

This section becomes effective beginning with the 2006-2007 school year. (BP)

Access to Toilets in Shopping Malls

S.L. 2005-289, Sec. 2 (HB 736, Sec. 2) repeals a December 1, 2005, sunset of the provision allowing a horizontal travel distance of 300 feet for access to public use toilets in covered mall buildings.

This section of this act became effective August 22, 2005. (SP)

Alcohol and Drug Education Traffic School/Fee/ Qualifications Increase

S.L. 2005-312 (HB 35) was recommended by the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The act:

- Increases the Alcohol and Drug Education Traffic (ADET) school fee from $75 to $160 and also increases the percentage of that fee the ADET school has to remit to the Department of Health and Human Services (Department) from 5% to 10%.
- Requires beginning January 1, 2009, that instructors must be a Certified Substance Abuse Counselor (CSAC), a Certified Clinical Addiction Specialist (CCAS), or a Certified Substance Abuse Prevention Consultant (CSAPC).
- Requires the Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services to revise rules on hours of instruction for ADET schools so that the minimum is at least 16 hours and to revise rules on class size so that the maximum is not more than 20 participants.

- Requires the Department to establish an outcomes evaluation study on the effectiveness of substance abuse services provided to persons obtaining a certificate of completion as a condition for restoration of a drivers' license. The Department must submit an initial report to the Joint Legislative Commission on Governmental Operations no later than December 31, 2007, and every two years thereafter.

The part of the act that increases the fee charged for ADET school instruction becomes effective upon adoption of the revised rules on class size and minimum hours of participation. The remainder of this act became effective August 25, 2005. (SP)

Certificate of Need Amendments

S.L. 2005-325 (SB 740) amends the Certificate of Need (CON) law as it relates to cardiac catheterization services, oncology treatment centers, long-term care hospitals, hospice offices, health maintenance organizations, kidney disease treatment centers, public hearings, and contested cases.

- **Cardiac catheterization services.** – The act adds the requirement of obtaining a CON before offering cardiac catheterization services (defined to include diagnosis, therapeutic interventions, and surgery) to the existing required CON before purchasing equipment to provide those services.
- **Kidney disease treatment centers.** – The act adds a definition of kidney disease treatment center to mean a center certified as an end-stage renal disease facility by the Centers for Medicare and Medicaid.
- **Long-term care hospitals.** – The act permits the State to control the inventory of beds in long-term care hospitals separate from the inventory of other hospital beds.
- **Hospice offices.** – The act requires a CON before a hospice would be able to open an additional office.
- **Oncology treatment center.** – The act requires a CON before acquiring either of two pieces of equipment: a linear accelerator (a device used for external beam radiation treatment for cancer patients), or a simulator (used to image the area to be radiated and to program an accelerator), rather than the previous CON requirement for medical equipment costing more than $250,000.

Section 1 of this act becomes effective for hospices and hospice offices December 31, 2005. The remainder of this act became effective August 26, 2005. (BP)

Critical Access Hospitals-Rural Hospitals/Regulation of Gastrointestinal Endoscopy Rooms

S.L. 2005-346 (HB 1060) allows the Office of Research, Demonstrations and Rural Health Development to designate a hospital located in a county with 25% or more rural residents (as defined by the most recent decennial census) as a rural hospital.

The act also amends the Certificate of Need (CON) law by separately defining gastrointestinal endoscopy rooms and operating rooms. The act provides CON regulation of licensed endoscopy procedure rooms through criteria and standards to be developed by the Division of Facility Services instead of the State Medical Facilities Plan. The facilities that elect to become licensed must show a need for 1,500 procedures and must submit a plan to serve medically underserved persons and report their data to the Department of Facility Services via the annual license form.

The act permits some existing gastrointestinal endoscopy practices to apply for a license to establish an ambulatory surgical facility for the provision of gastrointestinal endoscopy procedures without first obtaining a CON.

This act became effective August 31, 2005. (SP)

Establishing an Accreditation System for Local Health Departments

S.L. 2005-369 (SB 804) establishes the Local Health Department Accreditation Board and authorizes the Secretary of the Department of Health and Human Services to appoint 17 members to this Board. The act also requires the Board to implement accreditation of local health departments over an eight-year period starting January 1, 2006, and ensures that all local health departments must apply for initial accreditation by December 1, 2014. The Commission for Health Services will adopt rules establishing accreditation standards for local health departments. The process for accreditation must consist of the following components:

- A self-assessment by the local health department.
- A site visit by a team of experts.
- A final action by the Board on the local health department's accreditation status.

This act became effective October 1, 2005. (SP)

Central Listing of Mental Health Facilities Designated for Involuntary Commitments

S.L. 2005-371 (HB 1112) requires the Department of Health and Human Services to develop a central listing of mental health facilities designated for the placement of individuals to be committed involuntarily. The listing must be developed from existing funds, accessible on the Internet, and implemented no later than October 1, 2005. The act codifies the contractual obligation of area authorities to maintain a specific crisis response service and directs the department to report on the status of compliance of area authorities' crisis response service and to report on the implementation of the central listing to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by March 1, 2006.

This act became effective September 8, 2005. (SP)

No Tobacco Use in State Correctional Facilities

S.L. 2005-372 (SB 1130) prohibits the use of tobacco products inside State correctional facilities, except for religious purposes. Tobacco products are defined in the act as cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use.

The act also directs the Department of Correction (Department) to conduct pilot programs that would ban smoking both inside and outside of facilities and to administer smoking cessation programs. The programs are to be paid for by currently available funds, must be available to both employees and inmates, and must be on a volunteer basis. The Department is directed to report on the progress and status of this program to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on or before April 1, 2006.

The prohibition of tobacco use inside State correctional facilities becomes effective January 1, 2006; the remainder of this act became effective September 8, 2005. (SP)

Cancer Registry

S.L. 2005-373 (SB 506) adds two types of tumors, benign brain tumors and central nervous system tumors, to the diagnoses that health care facilities and health care providers must report to the North Carolina Central Cancer Registry. The act brings North Carolina into compliance with the Benign Brain Tumor Cancer Registries Amendment Act, which added those types of tumors to the more general term of "cancer" originally included in the section of the

United States Code creating the National Program of Cancer Registries and avoids the possibility of jeopardizing future federal funding of the North Carolina Central Cancer Registry for noncompliance with the Act.

This act becomes effective January 1, 2006. (BP)

Responsible Individuals List/Expunction Process

S.L. 2005-399 (HB 661). See **Children and Families**.

Pathology Services Billing

S.L. 2005-415 (HB 636) makes it unlawful for any person licensed to practice medicine, podiatry, or dentistry, or any hospital licensed in this State to bill for anatomic pathology services in an amount that exceeds what the clinical laboratory performing the service charged unless it is conspicuously disclosed. Disclosure may be on an itemized bill or statement, or in writing by a separate itemized disclosure statement which includes the amount charged by the laboratory, any other charge included in the bill, the name of the licensed practitioner supervising the service, and the name and address of the laboratory performing the service.

The act directs the Division of Facility Services to report on efforts made to apprise and evaluate licensed practitioners of the requirements of this act to the 2006 General Assembly and adds that out of state practitioners without proper North Carolina licensure may be charged with a Class I felony for practicing medicine in this State.

This act becomes effective December 1, 2005. (SP)

Amend Substance Abuse Laws

S.L. 2005-431 (SB 705). See **Occupational Boards and Licensing**.

Hospital Authority

S.L. 2005-449 (HB 1121) amends State law governing mergers of nonprofit corporations and applies to the merger of a hospital authority formed by a city in a county with a population of less than 150,000. The act applies to the merger of this hospital authority and either:

- A charitable or religious corporation formed on or before the effective date of the act and having its principal office located in the county at that time, or
- A hospital authority formed after the effective date of the act by the county in which the city is located.

The act sets forth the process for proposal and approval of the merger and identifies the required contents of the plan of merger to be reviewed and approved by the interested parties (city, county and board of commissioners or corporation board, as appropriate).

This act became effective September 29, 2005. (BP)

Update Disability Statutes/Service Animals

S.L. 2005-450 (HB 686) amends State disability law by updating the language used in the General Statutes to reflect current preference for "person first" terminology that emphasizes the individual rather than their disability. This is accomplished by replacing the outdated term "handicapped persons" with the preferred term "persons with disabilities." The act also grants every person with a disability the right to be accompanied by any service animal that has been trained to help assist the person with their specific disability.

This act became effective September 1, 2005. (BP)

Public Health Authorities/County Medicaid Billing

S.L. 2005-459 (SB 665) authorizes public health authority boards to contract with private vendors to operate their Medicaid billing system. Public health authority boards interested in contracting with private vendors must issue a "request for proposal" to solicit private vendor bids for contracts. The act also allows for the expansion of public health authority boards for boards intending to pursue federally qualified health center (or look alike) status.

This act became effective October 2, 2005. (BP)

Studies

Referrals to Existing Commissions/Committees

Study Oversight and Monitoring of Services to Mental Health Consumers

S.L. 2005-276, Sec. 10.34 (SB 622, Sec. 10.34) authorizes the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services to study the oversight and monitoring roles and activities of the Divisions of: Social Services, Facility Services, Medical Assistance, and Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services. The study must focus on how the oversight and monitoring activities benefit consumers of mental health, developmental disabilities, and substance abuse services in residential settings.

This section became effective July 1, 2005. (SP)

Referrals to Departments, Agencies, Etc.

Medicaid Personal Care Services Limitations

S.L. 2005-276, Sec. 10.19 (SB 622 Sec. 10.19) directs the Division of Medical Assistance of the Department of Health and Human Services to study and determine additional utilization/prior authorization systems for personal care services and other home- and community-based services that can be provided to individuals who meet medical criteria and that can be implemented when the new Medicaid Management Information System goes into effect. The Department of Health and Human Services, Division of Medical Assistance, must report the plan for implementation of this section, including costs, not later than May 1, 2006, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2005. (SP)

Medicaid Study

S.L. 2005-276, Sec. 10.21E (SB 622, Sec. 10.21E) directs the Department of Health and Human Services to study Medicaid Services for individuals who are dually eligible for Medicaid and Medicare.

This section became effective July 1, 2005. (SP)

Study of Accreditation of Residential Treatment Facilities

S.L. 2005-276, Sec. 10.35A (SB 622, Sec. 10.35A) directs the Department of Health and Human Services to study the feasibility of establishing accreditation requirements for residential treatment facilities. In conducting the study, the Department will identify accreditation organizations and a review of their standards and will consider the following:

- The financial and other impact accreditation will have on the facilities affected.
- The feasibility of developing an alternative to accreditation for small facilities.
- The potential for a reduction in the number of visits required by a local management entity if a residential facility were accredited.
- Review of accreditation requirements of other states.
- Cost of accreditation to the State and affected providers.
- The specific requirements to meet accreditation.

The Department of Health and Human Services must report its findings and recommendations 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 not later than March 1, 2006.

This section became effective July 1, 2005. (SP)

Department of Health and Human Services and Community Colleges Study Use of Medication Aides to Perform Technical Aspects of Medication Administration

S.L. 2005-276, Sec. 10.40D (SB 622, Sec. 10.40D) directs the Secretary of Health and Human Services and the President of the Community Colleges System to jointly convene a study group to review and consider the use of medication aides to perform the technical aspects of medication administration.

The study group must consist of members representing at least the following entities and licensed health care facilities and providers:

- Appointed by the Secretary of Health and Human Services:
  - Adult care homes
  - Home care agencies
  - Ambulatory surgical centers
  - Hospitals
  - Facilities providing mental health, developmental disabilities, and substance abuse services
  - Nursing homes
  - The nursing profession, as recommended by the Board of Nursing
- Community colleges appointed by the President of the Community Colleges System.
- The Secretary of the Department of Correction
- Others as may be appointed by the Secretary of Health and Human Services or the President of the Community Colleges System

The study group must address at least the following in its study and its recommendations regarding medication aide performance of the technical aspects of medication administration:

- Training and competency evaluation of medication aides
- Training standards
- Ongoing review and evaluation of medication aide training
- Requirements for supervision of medication aides

The Secretary of Health and Human Services and the President of the Community Colleges System must report the progress and recommendations of the study group to the 2006

Regular Session of the 2005 General Assembly upon its convening, and the 2007 General Assembly upon its convening.

This section became effective July 1, 2005. (SP)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 13
Insurance

Kory Goldsmith (KG), Tim Hovis (TH), Shawn Parker (SP), and Hal Pell (HP)

Enacted Legislation

Health and Life Insurance

Unauthorized Insurer Misconduct

S.L. 2005-209 (SB 577) prohibits an unauthorized insurance company from acting as a third party administrator in this State in connection with life or health insurance annuities. The act also prohibits an insurance company from entering into an agreement with an unauthorized insurer to provide administrative services in the State in connection with life or health insurance.

This act became effective October 1, 2005. (SP)

Health Insurance Changes

S.L. 2005-223 (HB 737) amends insurance law to make the following technical and substantive changes:

Effective July 27, 2005:

- Reduces the size of the Board of the North Carolina Small Employer Health Reinsurance Pool from nine to five members.
- Allows persons retroactively enrolled in Medicare Part B by the Social Security Administration six months to enroll in standardized Medicare Supplement Plans.
- Adds beneficiaries of life or annuity contracts to those considered to be claimants.

Effective October 1, 2005:

- Requires that a covered person or his or her representative requesting standard or expedited external review of "noncertification appeals" decisions or "second-level grievance review" decisions be given copies of any information considered by the insurer or its designee utilization review organization in making its decision.
- Clarifies the time frame for completion of expedited external reviews and for related noncertification and appeals decisions as being measured in business days.

Effective January 1, 2006:

- Requires that association insurance policy premium rates be actuarially sound.
- Prohibits a health insurer from increasing an individual's renewal premium for continued health insurance coverage based on any health status-related factor of the individual or a dependent of the individual.
- Exempts individual proprietors, owners, or operators from minimum workweek requirements. These individuals will be considered to be employees for the purpose of obtaining coverage under the employee group health plan. (SP)

Health Insurance Portability and Accountability Act Compliance and Fairness

S.L. 2005-224 (SB 626) amends various statutes to bring state law into compliance with the federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The act amends:

- The statutory definition of creditable coverage to provide that creditable coverage includes short-term, limited-duration health insurance coverage, and requires that this type of coverage be included as coverage reducing the period of any preexisting condition exclusion by a group health insurer.
- The law governing group special enrollment provisions to provide a special enrollment period for a person to enroll in a group plan without penalty when a health insurer terminated its own insurance. The enrollment must be requested within 30 days of the termination.
- The law governing eligible individuals. Effective January 1, 2006, once a person has obtained HIPAA eligible individual status, he or she retains the same guaranteed issue rights if the insurer terminates all individual coverage in this State.

Except as noted above, this act became effective July 27, 2005, and applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after that date. (HP)

Better Insurance Annuity Disclosure

S.L. 2005-234 (HB 655) adopts the National Association of Insurance Commissioners' (NAIC) model act/regulation on Annuity and Small Face Amount Life Insurance Disclosure and updates current life insurance disclosure provisions to reflect the model act. The changes specifically address disclosure requirements to assist the consumer when making a purchasing decision by requiring notice of the feature, including potentially negative aspects of each product. Sellers of small face life insurance (insurance with a face amount less than $15,000) must disclose that premiums paid-in may exceed the face value of the policy. Also, sellers of annuities must provide to an applicant a disclosure document, containing information on the insurer, specifics of the contract including the contract's long-term nature, the specific amount of charges applicable to the contract, and information on the variability of guaranteed rates and the current guaranteed rate.

The act also requires employers who purchase life insurance policies on the lives of their employees for the benefit of the employer to disclose to their employees that the employer has purchased or will purchase coverage on that employee and that disclosure must occur in connection with the application for coverage or within 30 days after the effective date of the coverage. The employer must also disclose that the policy may be maintained after the employment has terminated.

The act also requires group annuity insurers to issue certificates of coverage to each enrolled annuitant within 30 days of enrollment.

This act becomes effective January 1, 2006, and applies to policies or certificates issued on or after that date. (TH)

Budget Technical Corrections/Insurance

S.L. 2005-345, Sec. 3 (HB 320, Sec. 3) prohibits an insurer imposing as a limitation on treatment or level of coverage a co-payment amount charged to the insured for chiropractic services that is higher than the amount charged for comparable medically necessary treatment services provided by a duly licensed primary care physician.

This section becomes effective March 1, 2006, and applies to policies issued, renewed, or amended on or after that date. (SP)

Accident & Health Insurance/Rate Stabilization

S.L. 2005-412 (HB 735) makes changes to the statutes governing accident and health insurance benefits and includes a new provision governing the closing of blocks of business. A closed block of business is defined as "a block of business for which an insurer ceases to actively

market, sell, and issue new contracts under a particular policy form in the State." The act does the following:

- Requires all accident and health insurance policies (except long-tem care policies) to provide benefits that are reasonable to the premium charged.
- Authorizes the Commissioner of Insurance (Commissioner) to adopt rules establishing minimum standards for loss ratios on the basis of incurred claims experience and earned premiums.
- Requires all accident and health insurers (except long–term care insurers) to annually file rates, rating schedules, and supporting documentation, including actuarial certification, for the Commissioner's approval to demonstrate compliance with these loss ratios.
- Requires long-term care insurers to provide an actuarial certification listing all long-term care policy forms in the State stating that the current premium rate schedule is sufficient to cover anticipated costs.
- Requires insurers to submit a plan of corrective action for the Commissioner's approval if the certification cannot be made or is qualified.

The act also adds a new section to Chapter 58 of the General Statutes governing the closing of blocks of business by accident and health insurers. This section requires an insurer to provide the following notices a minimum of 60 days prior to the closure date:

- Notify the Commissioner of making a determination to close a block of business;
- Notify each agent and broker selling of the determination; and
- Notify all policyholders of the determination and the expected impact of the closing on future premiums.

This act becomes effective July 1, 2006. (TH)

Workers' Compensation

Workers' Compensation Self-Insurance Security

S.L. 2005-400 (SB 319) amends the Workers' Compensation self-insurance laws by repealing the North Carolina Self-Insurance Guaranty Fund and replacing it with the North Carolina Self-Insurance Security Fund. It eliminates the statutory assessment limits. Instead, the North Carolina Self-Insurance Security Association (Association) will determine the annual assessments for its members. Members of the Association will be divided into group self-insurers and individual self-insurers as defined in the act and will pay assessments to the Association. In addition, individual self-insurers will participate in the "Association Aggregate Security System" which is defined as a system allowing individual self-insurers to aggregate their workers compensation liabilities and pay assessments to the North Carolina Self-Insurance Security Association Fund based on the following:

- The total amount of assessments necessary to provide aggregate security for all participating members.
- The member's total workers' compensation liabilities under the workers' compensation law.
- The financial strength and creditworthiness of the member.
- Any other relevant factors.

The act also gives the Association the authority to exclude from the Association Aggregate Security System those individual self-insurers whose debt ratings by Moody's and Standard & Poor's fall below the minimum rating established by the Association. A self-insurer excluded from the Association Aggregate Security System will have to deposit 100% of the employer's total undiscounted outstanding claims liability, but not less than $500,000, to continue as a self-insured employer.

Other changes include:

- Definitions of affiliate, control, guarantor, holding company system, and subsidiary.
- Provisions specifying the conditions under which the Commissioner may issue a license to self-insure for a company and its affiliates or subsidiaries.
- Revision to provisions regarding the revocation, suspension, or restriction of a self-insurer's license so they more uniformly reflect the procedures applied in other license revocation actions.

This act becomes effective January 1, 2006. (KG)

Amend Workers' Compensation Act

S.L. 2005-448, Secs. 2-10 (HB 99, Secs. 2-10). See **Labor**.

Miscellaneous

Regional Public Transportation Liability

S.L. 2005-160 (HB 1503). See **Local Government**.

Credit Insurance Changes

S.L. 2005-181 (HB 653) amends credit insurance laws to codify existing policies adopted by the Department of Insurance and to clarify statutory requirements. The act also amends penalties to be consistent with the general enforcement authority of the Commissioner of Insurance. The act:

- Defines "critical period coverage" as insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less.
- Sets an appropriate refund method for decreasing term credit life insurance.
- Allows the provision of credit card credit insurance through out-of-State insurance contracts.
- Requires acknowledgement of credit insurance claims not paid within 30 days, bringing credit insurance into uniformity with the procedure in other lines of insurance.
- Allows a requirement of registration with the State unemployment office for involuntary unemployment benefits under a credit unemployment policy.
- Prohibits the placing of a deadline for registration or qualification for State unemployment benefits to qualify for involuntary employment insurance benefits.
- Clarifies that the refund for credit unemployment insurance must equal the pro-rata unearned gross premium.

This act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date. (HP)

Interstate Insurance Product Regulation Compact

S.L. 2005-183 (HB 673) adopts the National Association of Insurance Commissioners' (NAIC) Interstate Insurance Product Regulation Compact (Compact), a multi-state agreement that creates a national authority called the Interstate Insurance Product Regulation Commission (Commission). The Compact applies to individual and group annuities, life insurance, disability income, and long-term care insurance products. 14 states have adopted the Compact.

The Commission includes one member from each participating state and has a broad range of powers, including rule-making authority. It may adopt national uniform standards for certain products and receives, reviews, and provides appropriate regulatory approval for product filings and advertisements from insurers. The Commission's decisions have the force and effect of law and are binding on the participating states.

The Commission may not adopt uniform standards or review or approve product filings until:

- 26 states enact the Compact, or
- states with more than 40% of covered insurance products' premium volume enact the Compact.

Two-thirds of the participating states must approve a uniform standard before it takes effect. Any product the Commission approves may be sold or issued in any participating state in which the insurer is licensed to do business.

The act requires the North Carolina Commissioner of Insurance (Commissioner) to submit interim reports to the General Assembly on the effectiveness of the State's participation in the Compact. The Commissioner must submit a final report on this matter no later than January 1, 2009, and may include recommendations on legislation related to the Compact. The Commissioner must include a recommendation regarding whether the State should remain a member of the Compact.

This act became effective October 1, 2005, and expires on October 1, 2009. (HP)

Confidential Insurance Market/Financial Document

S.L. 2005-206 (HB 654) makes all market conduct analysis and financial analysis documents in the custody of the Department of Insurance confidential and not subject to subpoena unless a court determines that in the interests of justice the documents should be discoverable or admissible in evidence.

This act became effective October 1, 2005. (KG)

License Insurance Statistical Organizations

S.L. 2005-210 (HB 733) clarifies the licensing requirements for rating organizations, advisory organizations, and statistical agents by defining all three under the category of "statistical organization." Statistical organizations that are collecting and disseminating data for Rate Bureau lines of coverage (private personal auto, residential homeowners, workers' compensation) in addition to other commercial lines of coverage must be licensed, and the Commissioner of Insurance is given specific authority and grounds to revoke or suspend licenses. It also strengthens the reporting requirements for commercial and Rate Bureau lines.

This act became effective October 1, 2005. (KG)

Insurance Financial Changes

S.L. 2005-215 (HB 660) makes various changes to financial laws under Chapter 58 of the General Statutes relating to insurers, self-insurers, Health Maintenance Organizations (HMOs), and service corporations. The changes include:

- Amending the procedures for foreign insurance companies' security deposits held in trust by the Commissioner of Insurance or the State Treasurer.
- Requiring written notice when any change is made in the position of president or chief executive officer of a domestic insurer.
- Eliminating the provision that reciprocal insurance licenses will expire on June 30 of each year and substituting a provision allowing licenses to continue subject to the payment of an annual license continuation fee, and by increasing the amount that a

reciprocal insurer must maintain on deposit with the Commissioner from $100,000 to $400,000.

- Extending to workers' compensation self-insurance groups, service corporations, and HMOs provisions regarding dissolution, oaths, licensing, and notice of change in officer.
- Effective July 20, 2005, requiring that policyholders be given a proxy statement to allow them to vote on a proposal to reduce or retire guaranty capital.

Except as otherwise noted above, this act became effective October 1, 2005. (SP)

Department of Insurance Hearing/Unauthorized Insurance Summary Cease and Desist Order

S.L. 2005-217 (SB 552) clarifies the authority of the Commissioner of Insurance (Commissioner) to issue a cease and desist order if a person is selling insurance or otherwise transacting insurance business without a license and provides a hearing procedure following the issuance of this type of cease and desist order. In particular, the act:

- Distinguishes this type of cease and desist order as an "emergency" order.
- Makes the order effective either upon a date specified in the order, or when a certified copy of the order has been served on the person, whichever is later.
- Specifies that the emergency order must include a notice of hearing, that the Commissioner must proceed under the Administrative Procedure Act (Article 3A of Chapter 150B of the General Statutes) for contested cases, and that the person ordered to cease and desist may request and shall be granted an expedited hearing.
- Specifies that the emergency order will remain in effect during the hearing process.
- Specifies that a person may seek judicial review of a cease and desist order.

This act became effective October 1, 2005, and applies to orders issued on or after that date. (TH)

Insurance Board of Governors Membership

S.L. 2005-242 (HB 1236) replaces representatives of two insurance trade associations, the Alliance of American Insurers and the National Association of Independent Insurers, on the Board of Governors of the North Carolina Motor Vehicle Reinsurance Facility. These associations have been consolidated and will be represented on the Board by one member selected by the Property Casualty Insurers Association of America. The act provides that one additional member will be selected from the industry at large, regardless of trade affiliation.

This act became effective October 1, 2005. (HP)

Liability Insurance (Certain State Employees)

S.L. 2005-276, Sec. 10.7 (SB 622, Sec. 10.7). See **State Government**.

Insurance Company Fee Consolidation

S.L. 2005-424 (HB 646) makes changes to fees paid by insurers to the Department of Insurance, consolidating various fees into licensing and license continuation fees and increasing those fees from $1,000 to $1,500 for most insurers. The fee for fraternal order licensing and license continuation increased from $100 to $500.

The act also authorizes, contingent on federal funding, the Department of Insurance to hire a Medicare Lookout Program Coordinator (Coordinator) for the State Health Insurance Information Program.

The fee provision of this act becomes effective January 1, 2006. The authorization to hire a Coordinator became effective September 22, 2005. (SP)

Studies

Amend Workers' Compensation Act

S.L. 2005-448, Sec. 1 (HB 99, Sec. 1). See **Labor**.

Major Pending Legislation

Health Insurance Related Issues

A number of bills were introduced and discussed during the 2005 Session related to the affordability and availability of health insurance.

Healthy NC

Senate Bill 622 (Fourth Edition, Secs. 2.1 & 6.11) contained an appropriation of $2 million to begin funding a program, Healthy NC, to provide affordable health insurance coverage for small employers, self-employed individuals, and uninsured workers. SB 622 as enacted did not contain this provision. However, the Senate Committee on Commerce did discuss a Committee Substitute to SB 255, Small Employer Health Insurance, which outlined the proposal and is pending in the Senate Committee on Commerce. (KG)

Establish North Carolina Health Insurance Risk Pool

House Bill 1535 (First Edition) would assist persons with serious medical conditions afford health insurance by capping premiums and subsidizing the loss. A subcommittee of the House Committee on Insurance met on multiple occasions to discuss the bill. The bill is pending in the House Committee on Insurance. (KG)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 14
Labor and Employment

Karen Cochrane-Brown (KCB), Bill Gilkeson (BG), Kory Goldsmith (KG),
Theresa Matula (TM), and Hal Pell (HP)

Enacted Legislation

General Labor and Employment

Employment Security Commission Hearings Accommodate Business Activities

S.L. 2005-122 (HB 27) requires the Employment Security Commission to consider the ordinary business activities of employers when scheduling hearings for appeals from adjudicated determinations in unemployment benefit claims cases.

Under existing law, when certain issues are raised in connection with an unemployment benefits claim, such as the claimant's last bona fide employment or eligibility, adjudication is required to determine the issue. Adjudication is an informal investigation in which the adjudicator contacts the relevant parties to obtain information on the specific issue. After the conclusion of an investigative procedure, a determination is issued. A party aggrieved by the adjudicator's determination is able to file a written appeal. The appeal is heard by an Appeals Referee, who has broad authority over the scheduling and conduct of the hearing. Under existing regulations, the Appeals Referee is required to schedule a hearing as soon as possible after receipt of the appeal and file from the adjudicator. The law also authorizes the Appeals Referee to schedule telephone hearings when the local office is at least 40 miles from the employer's business, or upon agreement or request of the parties, or to meet standards for appeals promptness or efficient administration of the Employment Security Law. In addition, the Appeals Referee has authority to grant a continuance if a party, necessary witness, or legal representative has a prior commitment that conflicts with the hearing date or time and which cannot reasonably be rescheduled. This act adds a requirement that appeals "be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant."

This act became effective June 29, 2005. (BG)

Title Change/Safety and Health Review Board

S.L. 2005-133 (HB 874) changes the title of the Safety and Health Review Board to the North Carolina Occupational Safety and Health Review Commission. The act authorizes, in the case of an appeal, the North Carolina Occupational Safety and Health Review Commission to assess penalties against any employer who violates the State's Occupational Safety and Health Act.

This act became effective June 29, 2005. (HP)

Transit Drug Testing

S.L. 2005-156 (HB 740). See **Transportation**.

Health Insurance Changes

S.L. 2005-223 (HB 737). See **Insurance**.

Trade Jobs for Success Reporting

S.L. 2005-276, Sec. 13.4A (SB 622, Sec. 13.4A) expands the reporting requirements of State agencies responsible for the Trade Jobs for Success (TJS) initiative.

TJS is a non-reverting fund established in 2004 within the Department of Commerce, which in conjunction with the Employment Security Commission (ESC) and the Community College System Office, is responsible for the initiative. The purpose of TJS is to stimulate job growth and hiring in the State and to assist displaced workers affected by trade-impact business closings. Its aim is for government to partner with private business to move displaced workers into new jobs while allowing for a dignified transition from unemployment back to employment.

Existing law required the Department of Commerce, in conjunction with ESC and the Community Colleges, to make a quarterly report about TJS. This section rewrites that statute to require the Department of Commerce to publish all of the following reports:

- Beginning July 1, 2005, a monthly report.
- Beginning October 1, 2005, a quarterly report.
- Beginning January 1, 2006, a comprehensive annual report.

All three reports must be sent to the Governor and the Fiscal Research Division of the General Assembly. The quarterly and annual reports must also be copied to the Joint Legislative Commission on Governmental Operations and to the chairs of the Senate and House Appropriations Committees. The Department of Commerce must publish all three reports in conjunction with ESC and the Community College System Office.

In addition, this section directs the same three agencies to make a joint written progress report on compliance with Section 13.7A of S.L. 2004-124 regarding the following:

- Actions taken to obtain waiver under the Trade Adjustment Act to allow TJS to (1) serve persons regardless of age, (2) use unemployment funds to provide monetary incentives to employers and income to workers in the retraining program, and (3) use funds for in-State relocation assistance.
- Whether waivers have been sought for other program components.
- Progress made in implementing the TJS initiative in counties hardest hit by trade-affected job losses.
- Efforts of the Department of Commerce to seek private grants and federal funds for the TJS initiative.
- Any reasons why legislative mandates have not been followed or statutory goals have not been achieved.

The three agencies must submit the joint report by August 1, 2005, to the Joint Legislative Commission on Governmental Operations and to the Senate and House Appropriations chairs.

This section became effective July 1, 2005. (BG)

Workers' Compensation Self-Insurance Security

S.L. 2005-400 (SB 319). See **Insurance**.

Employment Security Commission Omnibus Act

S.L. 2005-410 (SB 757) makes the following changes to the Employment Security Act:

The School Exception. – The law sets out when an unemployed individual is eligible to receive benefits and requires that the individual be able to work and be available for work.

Previously, the law provided that a person was not available for work if he or she was registered at and was attending school, but then provided detailed exceptions from that provision. This act simplifies that law by providing that a person is not disqualified for eligibility solely because he or she is in school.

Contribution Reduction Formula. – The law sets out contribution rates for employers. Previously, there was a standard rate, but a different rate was used if the employer had an account with a credit balance, and the contribution rate was reduced for any year in which the balance in the Unemployment Insurance Fund equaled or exceeded $800 million. This act amends the law so the contribution rate is reduced for any year in which the balance in the Unemployment Insurance Fund equals or exceeds 1.95% of the wages reported in the previous calendar year (rather than the flat $800 million benchmark).

"Willfully" and "Knowingly." – This portion of the act adds a definition for "willfully" to Chapter 96 of the General Statutes to clarify that "willfully" and "knowingly" have the same meaning as used in the Chapter.

Transferring Accounts. – The law deals with the transfer of an employer's account when the employer's business, or part of the business, is acquired by another individual or employing unit. The act provides that an account will not transfer when the individual is not an employer at the time of the acquisition, or when the individual acquired the business for the purpose of getting a reduced contribution rate. The act also provides that, whenever part of a business is transferred between entities with substantially common ownership, the tax account will be transferred in accordance with regulations, but employing units transferring entities with common ownership will not be entitled to separate employer status.

Lesser Tax-Evasion Penalties. – The law provides that the penalty for attempting to evade or defeat a tax (Class H felony), applies to unemployment insurance contributions only when one of the following circumstances exist:

- An employing unit employs more than 10 employees.
- A contribution of more than $2,000 has not been paid.
- An experience rating account balance is more than $5,000 overdrawn.

The act provides that, if none of these circumstances exist, attempting to evade or defeat a tax will be a Class 1 misdemeanor. It also provides that a person who violates the law by assisting in preparing fraudulent tax information, and is not subject to a fraud penalty, must pay a civil penalty of $500 per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

The portion of the act concerning the Contribution Reduction Formula became effective October 1, 2005. The portion of the act concerning Lesser Tax-Evasion Penalties will become effective December 1, 2005. The remainder of this act became effective September 20, 2005. (BG)

Amend Workers' Compensation Act

S.L. 2005-448 (HB 99) makes a number of changes to the North Carolina's Workers' Compensation Act.

The following changes were effective October 1, 2005:

- A positive drug or alcohol test creates a rebuttable presumption of impairment from drugs or alcohol.
- The North Carolina Industrial Commission (Commission) will be able to extend the 14-day period during which an employer must pay compensation after a notice of the employee's injury or death. The act also clarifies that the employer or insurer may deny the claim in good faith without initiating payments during the 14-day period. However, the employer must investigate the claim promptly and the Commission may order sanctions against an employer or insurer that does not admit or deny the claim, or initiate payments without prejudice within 30 days.

- The Commission may terminate benefits received by an employee resulting from fraudulent conduct.

The following changes were effective September 29, 2005, and apply to pending claims as well as claims filed on or after that date:

- It is no longer necessary to include a list of all known medical expenses in a settlement agreement if the agreement provides that the employer agrees to pay all medical expenses related to the injury.
- An employee or health care provider may apply to the Commission regarding any dispute for payment of charges for medical compensation.
- An employer or insurer paying medical compensation has the right to obtain the employee's medical records of the treatment without the employee's express authorization and, with written notice to the employee, obtain directly from the provider medical records of the evaluation or treatment of the current injury or condition. The employee must also furnish, upon request, records to the employer in his or her possession.

This act became effective as noted above.

See also **Studies, New/Independent Studies/Commissions** subheading in this chapter for Workers' Compensation Benefits Study. (KG)

2005 Omnibus Labor Law Changes

S.L. 2005-453 (HB 768) amends the Uniform Boiler and Pressure Vessel Act and the Wage and Hour Act.

Uniform Boiler and Pressure Vessel Act Changes. –

- Amends definitions in the Boiler Act, including "Chief Inspector" and "Deputy Inspector."
- Makes technical and other changes to the applications and exemptions section of the Boiler Act.
- Modifies the powers and duties of the Commissioner of Labor (Commissioner) by allowing the Commissioner to determine and delegate any powers, duties, and responsibilities concerning the operation of boilers and pressure vessels to the Chief Inspector. The Commissioner is also given the power to order the payment of civil penalties for violations, and oversight authority over any boiler or pressure vessel that is brought into, or moved within, the State.
- Eliminates the office of the Director of the Boiler and Pressure Vessel Division at the North Carolina Department of Labor (NCDOL) and creates the Boiler Safety Bureau within the NCDOL.
- Eliminates the current requirement that the fees collected from the inspection of boilers and pressure vessels be held by the Treasurer in a special account to cover the operating expenses of the Boiler and Pressure Vessel Division.
- Changes the composition requirements of the North Carolina Board of Boiler and Pressure Vessel Rules (Board).
- Provides that the Board members are to serve as proctors during the administration of the National Board commissioning examination. Also provides that whenever action is taken by the Board to suspend or revoke a commission of an inspector of boilers and pressure vessels, the affected party is to be given notice of the availability of an administrative hearing and judicial review under the Administrative Procedure Act (APA), Chapter 150B of the General Statutes.
- Eliminates discretionary language in the requirement that the rules and regulations conform as closely as possible to the standards of the American Society of Mechanical Engineers and makes other technical changes in the statute.

- Specifies that a boiler pressure inspector or deputy inspector must be a person employed by the NCDOL. A special inspector may not be an employee of private contract inspection agencies.
- Adds the requirement that a person seeking a North Carolina commission to conduct in-service inspections of boilers and pressure vessels must pass an examination on the Boiler Act and rules adopted under it before receiving a commission. Any person who has had a North Carolina commission, but has been inactive for more than one year, must take or retake the State examination before conducting further in-service inspections of boiler and pressure vessels.
- Provides that no boiler or pressure vessel may be operated without a valid inspection certificate, except for certain pressure vessels being operated under an owner-user provision that has been approved by the Board and Commissioner. The act also extends the grace period, from 60 to 90 days, for operating a boiler or pressure vessel beyond the certificate expiration date.
- Rewrites the provisions governing administrative and judicial review of decisions. Previous law allowed for decisions to be made in accordance with the APA, and decisions of the Director of the Boiler and Pressure Vessel Division were not stayed during the pending administrative review. The act now allows the Commissioner to determine whether a boiler or pressure vessel that is subject to regulation is exposing the public to an unsafe condition that is likely to result in serious personal injury or property damage. The Commissioner may stop or limit boiler or pressure vessel use until it has been made safe for operation. The Commissioner also has the authority to refuse to issue or renew, or may revoke, suspend, or amend, inspection certificates. Judicial review is available in accordance with the APA.
- Rewrites the violations provisions of the Boiler Act. No person may operate a boiler or pressure vessel subject to the Boiler Act without a valid inspection certificate, unless the absence of such a valid certificate is because the Commissioner has not inspected the device. In addition, no person may operate, or permit to be operated, any boiler or pressure vessel subject to the Boiler Act if the Commissioner has refused to issue or has revoked the inspection certificate for the boiler or pressure vehicle.
- Adds a new civil penalties section to the Boiler Act with the following penalties:
  - No more than $250 per day fine for each boiler or pressure vessel operated without an inspection certificate or not in accordance with the rules of the Boiler Act.
  - No more than $500 per day fine for operating a boiler or pressure vessel after the refusal to issue, or the revocation, of an inspection certificate.

  In determining the amount of the penalty, the Commissioner is to consider the appropriateness of the penalty with respect to the size of the business, the gravity of the violation, good faith and record of previous violations. The act also provides for appellate procedures for contesting the decision.
- Provides criminal penalties for violations of the Boiler Act, including willful misrepresentation as an authorized inspector, and making a false statement in any application, record, report, or plan.
- Amends the statutes relating to the assessment, collections and disposition of fees.

Wage and Hour Act Changes. –

- Expands the exemption from the Wage and Hour Act for children under the age of 18 who are employed by their guardians, or other persons standing in *loco parentis*.
- Rewrites the withholding provisions of the Act to allow an employer to withhold or divert any portion of an employee's wages when required to do so by State or federal law. The act provides limitations on withholding if wages are withheld for the employer's benefit, or for the employee's benefit. The changes require notification and employee authorization, except where criminal process has been issued, or the

employee has been indicted or arrested, for a criminal charge relating to the employer's property.
- Clarifies that employers are not required to provide vacation "pay plans," and must provide 24-hour advance notice to employees of any change to a promised increase in wages.

This act became effective October 1, 2005. (HP)

Governmental Employment

Retirement Systems Technical Corrections

S.L. 2005-91 (HB 710). See **Retirement**.

Department of Health and Human Services Payroll Deductions for Child Care Services

S.L. 2005-276, Sec. 10.8 (SB 622, Sec. 10.8) amends the law (language has previously appeared in uncodified form) to allow employees of the Department of Health and Human Services to authorize, in writing, the deduction, from salary or wages paid by the State, a designated lump sum for services received for child care provided by the Department. The deductions must be made pursuant to rules adopted by the State Controller.

This section became effective July 1, 2005. (TM)

Implementation of Treatment Staffing Model At Youth Development Centers

S.L. 2005-276, Sec. 16.6 (SB 622, Sec. 16.6) requires the Department of Juvenile Justice and Delinquency Prevention (Department) to report on the treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers. The report must be made December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee. The report must include the following:

- A list of total positions at each facility by job class, whether the position is vacant or filled, whether positions were filled from internal employees or new employees, and the training and certification status of each position;
- The nature of the treatment program, the criteria for evaluating the program, and how the program is performing in comparison to these criteria; and
- A description of the training approach to be used to train staff in using treatment methods in youth development centers and provide information on current staff training and staff training planned for the next quarter.

This section also requires the Department to develop indicators for evaluating staff performance once the model has been implemented.

Additionally, the section includes a reporting requirement on the implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers. The report must identify the number of positions reallocated to the new treatment job classes and the source of funding for those positions. The Department must report by December 31, 2005, and quarterly thereafter during the 2005-2007 biennium to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

This section became effective July 1, 2005. (TM)

Holiday Pay for Department of Correction Staff

S.L. 2005-276, Sec. 17.3 (SB 622, Sec. 17.3) provides that holiday pay for eligible Department of Correction staff will be 150% of regular pay during the 2005-2007 biennium. The provision further provides that the Department of Correction may use funds available to pay up to 175% of regular pay for holiday pay during the 2005-2007 biennium.

This section became effective July 1, 2005. (TM)

Department of Correction Security Staffing Formulas

S.L. 2005-276, Sec. 17.4 (SB 622, Sec. 17.4) amends the law pertaining to security staffing to require the Department of Correction (Department) to conduct:

- On-site postaudits of every prison at least once every three years.
- Regular audits of postaudit charts through the automated postaudit system.
- Other staffing audits as necessary.

Additionally, the law is amended to require the Department to update the security staffing relief formula at least every three years and to survey other states to determine which states use a vacancy factor in staffing relief formulas.

The Department is required to begin implementation of the 2004-2005 postaudit by July 1, 2005, and provide a progress report on the implementation of the new postaudit at each prison by October 1, 2005, to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

The Department must report on the final implementation of the 2004-2005 postaudit of each prison including an update on implementation of the staffing recommendations of the National Institute of Corrections, a status report on the implementation of a centralized postaudit control system, the automation of leave records, and the survey of other states' use of a vacancy factor in staffing relief formulas. This report is due by April 1, 2006, to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

This section became effective July 1, 2005. (TM)

Department of Transportation Productivity Pilot Program

S.L. 2005-276, Sec. 28.9 (SB 622, Sec. 28.9). See **Transportation**.

Department of Transportation Reorganization

S.L. 2005-276, Sec. 28.11 (SB 622, Sec. 28.11). See **Transportation**.

Special Annual Leave Bonus

S.L. 2005-276, Sec. 29.14A (SB 622, Sec. 29.14A) provides a one-time additional five days of annual leave credited on September 1, 2005, to any person, except as otherwise specified, who is a full-time, permanent employee of the State, a community college institution, or a local board of education on September 1, 2005, and who is eligible to earn annual leave. This leave will be accounted for either separately or together with leave provided in Section 28.3A of S.L. 2002-126 and Section 30.12B(a) of S.L. 2003-284. Those not eligible to receive the special annual leave bonus include: any employee or officer who does not earn annual leave and/or any public school employee or State employee paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.

This section became effective July 1, 2005, the special annual leave bonus was credited to eligible employees on September 1, 2005. (TM)

State Government Employment Fair Minimum Wage

S.L. 2005-276, Sec. 29.18 (SB 622, Sec. 29.18) provides that all permanent, full-time employees subject to the State Personnel Act must be paid a minimum salary of at least $20,112 per year, or a pro rata amount for permanent, full-time employees subject to the State Personnel Act working on a schedule requiring less than 12 months' service per year. In an effort to lessen salary compression and potential pay inequities, the provision allows State agencies, departments, and institutions, and The University of North Carolina to make adjustments to the salaries of supervisors and other employees who have more experience and length of services compared to the employees receiving the increase. The salary compression and pay equity determinations must be made in consultation with the Office of State Personnel.

This section became effective July 1, 2005, and the fair minimum wage salary adjustment was calculated and awarded after any across-the-board salary increases authorized by the act containing this section. (TM)

Change Disability Plan Amendment Effective Date

S.L. 2005-276, Sec. 29.30B (SB 622, Sec. 29.30B) extends the effective date of changes made to the eligibility standard for the Disability Income Plan until August 1, 2006. S.L. 2004-78 provided that effective August 1, 2005, a participant or beneficiary must be unable to perform any occupation or employment commensurate to the beneficiary's or participant's education, training, or experience, which is available in the same commuting area for State employees or within the same local school district for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than 65% of his or her pre-disability earnings. The 2004 provision was made effective August 1, 2005, and applies only to persons who are not vested in the disability income plan on that date. This act extends the effective date of this change until August 1, 2006.

This section became effective July 1, 2005. (KCB)

Death Benefits Act Definition

S.L. 2005-276, Sec. 29.30C (SB 622, Sec. 29.30C) amends the definition of the term "killed in the line-of-duty" in the Law Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefit Act. The amended definition provides that if any member of the Plan dies as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after a training exercise or an emergency situation, the member is presumed to have been killed in the line of duty.

This section became effective July 1, 2005. (KCB)

State Health Plan Changes

S.L. 2005-276, Sec. 29.31 (SB 622, Sec. 29.31) makes changes to the benefits under the State Health Plan (Plan). The Plan will pay 100% of allowable charges for mammograms taken once a year for covered individuals age 40 years and over. It will also pay 100% of allowable charges for mammograms for persons under 40 years of age, if the mammograms are not taken more than once in every 3 years. The mammograms must be incurred in a medically supervised facility. Mammograms taken more often will be subject to the Plan deductible and coinsurance requirements.

The copayment for each outpatient prescription drug has been increased from $35 to $40 for each branded prescription with a generic equivalent drug, and from $40 to $50 for each branded or generic prescription not on a formulary used by the Plan.

The amount of the maximum annual out-of-pocket copayment is increased from $1500 to $2000 for an individual and from $4500 to $6000 for employee and children or employee and family coverage. The Plan will not pay the first $150 (previously $100) of the allowable room accommodation charge, the first $75 (previously $50) of the allowable facility fees and ancillary charges, or the first $200 (previously $100) of allowable emergency charges when admission to a hospital pursuant to the emergency room use does not immediately follow.

Coverage under the State Health Plan for the employees of the North Carolina Symphony Society, Inc. will expire June 30, 2006.

This section became effective July 1, 2005. (KG)

State Health Plan/Optional Programs

S.L. 2005-276, Sec. 29.33 (SB 622, Sec. 29.33) authorizes the Teachers' and State Employees' Comprehensive Major Medical Plan (Plan) Executive Administrator and Board of Trustees, following consultation with the Committee on Employee Hospital and Medical Benefits, to adopt an optional prepaid hospital and medical benefits program other than the one currently authorized. The optional program will be exempt from benefits and cost-sharing requirements under the law, exempt from statutory contract requirements, and the terms of the contract will not be a public record for a period of 30 months after the date of the expiration of the contract. The Executive Administrator and Board of Trustees may set premium rates for coverage on a partially contributory basis, provided that the amounts of State funds contributed for coverage on a partially contributory basis are not more than the Plan's total noncontributory premium for Employee Only coverage, with the person selecting the optional program coverage paying the balance of the partially contributory premium not paid by the Plan. The amount of State funds contributed for purchased optional programs must not exceed the amount of a purchased optional program's cost for Employee Only coverage.

This section became effective July 1, 2005. (TM)

State Health Plan/Exempt Positions

S.L. 2005-276, Sec. 29.34 (SB 622, Sec. 29.34) amends the law to provide that the Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan (Plan) may designate managerial, professional, or policy-making positions as exempt from the State Personnel Act. According to the provision, in an effort to implement the Plan, the Executive Administrator may establish and fill up to three additional managerial, professional, or policy-making positions and may designate these positions as exempt from the State Personnel Act.

This section became effective July 1, 2005. (TM)

Exempt Banking Commission Staff from State Personnel Act

S.L. 2005-284 (SB 644) exempts the employees of the Office of the Commissioner of Banks from certain classification and compensation related rules established by the State Personnel Commission and other requirements related to leave and compensation. The exemptions are to be used to develop organizational classification and compensation innovations that will result in more efficient operations. The Office of State Personnel is directed to assist the Commissioner of Banks in developing new structures and human resource programs to replace those from which the employees are being exempted. The Commissioner of Banks and the Office of State Personnel are directed to report jointly to the General Assembly by April 1, 2007.

This act became effective August 18, 2005. (KCB)

Death Benefit for Part-Time Law Enforcement

S.L. 2005-376 (SB 148) amends the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act to extend the $50,000 death benefit paid to those killed in the line of duty to permanent part-time, temporary, and volunteer enforcement officers and detention officers.

This act became effective November 1, 2004, and applies to all deaths occurring on or after that date. (TM)

Studies

New/Independent Studies/Commissions

Workers' Compensation Benefits Study

S.L. 2005-448 (HB 99) establishes the Study Committee on Workers' Compensation Benefits (Committee) consisting of 12 members, 6 appointed by the President Pro Tempore of the Senate and 6 appointed by the Speaker of the House of Representatives. The Committee is directed to study the following:

- Appropriate coverage and benefit levels, including cost-of-living adjustments.
- The compatibility of workers' compensation benefits with other disability benefits including social security and private disability benefits.
- Compensation related to exposure to asbestos or silica.
- The manner and duration of medical benefits.

The Committee is directed to report to the 2006 Regular Session of the 2005 General Assembly upon its convening and make its final report to the 2007 General Assembly upon its convening. Progress and final reports may include recommended legislation.

This section of the act became effective September 29, 2005.

See also **Enacted Legislation** this chapter, Amend Workers' Compensation Act, for additional provisions of this act. (KG)

Referrals to Departments, Agencies, Etc.

Staffing Study of Unit Management

S.L. 2005-276, Sec. 17.17 (SB 622, Sec. 17.17) directs the Department of Correction (Department) to conduct an organization and staffing study of unit management in the State prison system. The study must focus on the 18 prison facilities that use unit management and must include a review of the workload and staffing for each of the prisons, as well as recommendations for staffing changes and staffing efficiencies. In conducting the study, the Department must consider the responsibilities and workloads of custody supervisors and program staff in relation to unit managers and determine where the responsibility of certain functions should be placed.

The Department is required to report findings and recommendations to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006.

This section became effective July 1, 2005. (TM)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 15
Local Government

Erika Churchill (EC), Judy Collier (JC), Kory Goldsmith (KG), Theresa Matula (TM),
Joe Moore (JHM), Giles Perry (GSP), and Barbara Riley (BR)

Enacted Legislation

Currituck Property Conveyance

S.L. 2005-18 (HB 1061) amends S.L. 2004-124, (HB 1414, Sec. 30.3F) by compensating the State of North Carolina $40,001 for conveying to Currituck County a parcel of land in Crawford Township. The amount includes $40,000 for legal expenses. The parcel is conveyed in fee simple absolute with no restrictions or covenants.

This act became effective April 28, 2005. (JHM)

Smoking in Public Places/Local Health Department

S.L. 2005-19 (HB 239). See **Health and Human Services**.

Unified Government

S.L. 2005-35 (HB 399) allows a county government in a county where there are no incorporated municipal areas to assume the powers, duties, functions, rights, privileges, and immunities of a city upon a referendum of the voters of that county. Upon a positive vote of the people of the county, the county would assume all the powers, duties, functions, rights, privileges, and immunities of a city **EXCEPT** all of the following:

- The ability to exercise any municipal power outside the corporate boundaries of the county. (This prevents the ability of the county to exercise extraterritorial jurisdiction authority over lands outside the county).
- Annexation authority.
- Form of Government and Administrative Offices. (The county would remain organized as a county).
- Law Enforcement.
- Municipal elections, except to the extent those generally applicable laws currently apply to counties.

Upon the grant of municipal powers, the board of county commissioners also would have the ability to opt out of a specific power by local ordinance if they so desire.

S.L. 2005-433, Sec. 10 (HB 787, Sec. 10) grants the same ability to unify government to counties in which the county has 1 incorporated municipality located within the county and the land area of that municipality is located primarily in another county and consists of less than 100 acres within the county attempting to unify government services. This section became effective September 22, 2005.

This act became effective May 12, 2005. (EC)

Multi-Jurisdiction Industrial Park Changes

S.L. 2005-72 (SB 867) extends the period of time, from 40 years to 99 years, that 2 or more units of local government may agree to undertake the development of an industrial or commercial park or site.

This act became effective June 2, 2005. (TM)

Water and Sewer District Boundaries; Per Diem

S.L. 2005-127 (SB 15). See **State Government**.

County Service Districts

S.L. 2005-136 (SB 396) allows counties, after notice and a public hearing, to relocate boundary lines between adjoining county service districts, if the districts were established for substantially similar purposes. A resolution changing the boundaries would take effect at the beginning of the fiscal year commencing after its passage.

This act became effective June 29, 2005. (JC)

Regional Public Transportation Liability

S.L. 2005-160 (HB 1503) amends the statutes governing the Triangle Transit Authority (Authority) to provide that the Authority is to be treated as a city for purposes of civil liability. The act provides that the Authority waives governmental immunity to a minimum of $20 million per single accident or incident. The act requires the Authority to maintain liability insurance of at least $20 million per single accident or incident, and provides that the Authority is immune from liability except to the extent it purchases insurance over and above $20 million. Participation in a local government risk pool is to be considered the same as purchasing insurance under this act.

This act became effective July 7, 2005, and applies to claims arising on or after that date. (GSP)

Smoking in Public Places/Local Health/Departments

S.L. 2005-168 (HB 1482). See **Health and Human Services**.

Public Comment at Local Board Meetings

S.L. 2005-170 (HB 635) requires at least one public comment period per month at a regular meeting of a local board of education, county board of commissioners, or municipal board. A public comment period is required if the board does not have a regular meeting during the month. The bill authorizes the local boards to adopt reasonable rules governing the conduct of the public comment period including the following rules:

- Fixing the maximum time allotted to each speaker.
- Designating spokespersons for groups.
- Providing for the selection of delegates from groups when space exceeds capacity.
- Providing for order and decorum during the meeting.

This act became effective July 11, 2005. (BR)

Design/Build/Operate Contract Sludge Management

S.L. 2005-176 (HB 1097). See **Environment and Natural Resources.**

Electronic Purchases and Sales

S.L. 2005-227 (HB 1332) primarily changes the notice requirements for the waiver of bid procedure involving political subdivisions of the State and the public auction notice requirements for cities and towns and increases certain monetary thresholds. The act provides that the waiver of bid procedure notice, and the public auction notice, may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both, and requires that the decision to publish notice solely by electronic means must be approved by the governing board of the political subdivision. The act also increases, from $5,000 to $30,000, the monetary threshold for determining when counties, cities, towns, and other subdivisions must let contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment involving the expenditure of public money. The thresholds for when city councils may adopt regulations prescribing procedures for the disposing of personal property, and for authorizing officials to declare surplus any personal property, are also increased from $5,000 to $30,000. Additionally, the act adds school superintendents to the list of individuals who have the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit, and adds local school administrative units to the list of entities included in the law pertaining to letting contracts on informal bids. The act provides that if any local act provides a threshold amount that is less than the amount provided in this act, this act prevails to the extent of that conflict.

This act became effective July 27, 2005. (TM)

Public Finance Changes

S.L. 2005-238 (HB 1117). See **Finance.**

Randleman Dam Bonds

S.L. 2005-249 (SB 1011) gives municipalities the authority to issue revenue bonds for the construction of a water treatment plant and related facilities that would be owned by a water and sewer authority. It would also give the issuing municipality the ability to secure the bonds through an "absolute, unconditional, and irrevocable" payment obligation agreement with the other participating members of the authority.

This act became effective August 4, 2005. (JC)

Fire Service District Tax Rate

S.L. 2005-281 (SB 32). See **Finance and Retirement**.

Regional Councils of Government

S.L. 2005-290 (HB 819) authorizes regional councils of government to acquire real property by purchase, gift, or otherwise and to improve that property for the purpose of meeting office space and program needs. A regional council may not exercise the power of eminent domain.

This act became effective August 22, 2005. (TM)

Prohibiting Solicitations on State Highways

S.L. 2005-310 (HB 813) authorizes local governments to enact ordinances that prohibit persons from standing on any street, highway, or right of way excluding sidewalks, while soliciting or attempting to solicit any employment, business, or contribution from the driver or occupant of a vehicle. The act does not permit additional restrictions or prohibitions on the activities of licensees, employees, or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys.

This act became effective August 25, 2005. (BR)

Regional Transportation Metropolitan Planning Organization Representation

S.L. 2005-322 (HB 1202) amends the membership of the governing Board of Trustees of the Piedmont Authority for Regional Transportation (Authority) by authorizing each Metropolitan Planning Organization (MPO) in the territory of the Authority to designate a member of the MPO to serve on the Board, instead of the chair of the MPO. The act eliminates the authority of the chair of the MPO to appoint as a designee the chair of the MPO's Transportation Advisory Committee (TAC), or a person approved by the TAC.

This act became effective August 26, 2005. (GSP)

Add Agencies to Set-Off Debt Collection

S.L. 2005-326 (SB 682). See **Finance**.

Amend the ABC Election Law

S.L. 2005-336 (HB 1416). See **Alcoholic Beverage Control.**

County Government Criminal Record Checks

S.L. 2005-358 (SB 737) allows a county to obtain a criminal history on applicants for employment in the same manner as municipalities.

This act became effective September 7, 2005. (EC)

Public Health Task Force/Accreditation Recommendation

S.L. 2005-369 (SB 804). See **Health and Human Services**.

City/County Planning Clarification

S.L. 2005-418 (SB 518) makes a number of mostly technical changes to the city and county planning statutes. It expressly allows cities and counties to pass a unified land development ordinance (UDO), encompassing zoning, subdivision, housing code, and other development regulations. The UDO may cover any ordinance a city or county may adopt under their statutory planning and development powers.

The act adds sketch plans and preliminary plats to the provisions for plat approval in the statutes regarding subdivision regulation. Plat approval must be based on standards articulated in the ordinance. It also simplifies the alternate notice provision for a public hearing on zoning

affecting more than 50 parcels by requiring the half-page newspaper ad to be published twice rather than 4 times.

The act adds a new requirement regarding zoning map amendment hearings. The notice must now be posted on the site of the affected parcel or on an adjacent street or right-of-way. The act also clarifies that the protest petition statute only applies to amendments to the zoning map, not to text amendments. It also changes the delineation of the territory within which an owner is qualified to sign a protest petition, and also makes clarifications regarding who qualifies as a property owner eligible to sign the petition.

The act also provides that a recommendation by a city or county planning board is required before initial adoption of zoning. It also requires that a subsequent proposal to change the zoning ordinance must be submitted to the planning agency for its review and comment before the governing body decides on the proposal.

The act also makes changes to the law regarding the Board of Adjustment (BOA), whose job is to make quasi-judicial decisions about the application of the zoning ordinance. It provides for alternate members of the BOA to be appointed to serve when a member has been temporarily disqualified. It also authorizes the BOA, in issuing a variance, to impose conditions on the variance, provided that the conditions are reasonably related to the circumstances that gave rise to the variance request.

This act becomes effective January 1, 2006. (KG)

Modernize City/County Planning

S.L. 2005-426 (SB 814) makes several changes to the statutes regarding city and county planning and regulation of development.

The provisions regarding the types of notice a city or county must give regarding proposed planning and development ordinances are amended to allow the notice to be given through electronic means.

The provisions regarding subdivision regulation are amended as follows:

- The purpose for the regulation of subdivisions now states that subdivision regulation is intended, among other things, to create conditions that substantially promote public health, safety, and the general welfare.
- Subdivision approval may be conditioned upon a range of performance guarantees such as surety bonds or letters of credit.
- Codifies case law that provides that building permits may be denied because lots were illegally subdivided. It also provides for routine enforcement methods of city and county subdivision regulations, short of criminal sanctions and injunctive relief.
- Changes the definition of "subdivision," to include the division of land to create only one lot for sale or development and that cities and counties may provide for expedited review of certain classes of subdivisions.

The laws regarding zoning regulation are amended as follows:

- Allows zoning to be incorporated into a unified development ordinance (UDO).
- Codifies case law prohibiting variances for uses.
- Clarifies that planning boards, as well as governing boards, may authorize special and conditional use permits, and do not need a supermajority vote to do so. Also clarifies that vacancies on the board and members disqualified to vote on an issue are not counted for purposes of calculating the majority.
- Codifies case law on prohibiting financial conflicts of interest on zoning amendments and applying the same rule to planning board advisory decisions.
- Allows cities and counties to adopt temporary moratoria on approvals of some types of development. Any moratorium must be reasonable in light of the conditions that caused it, and the unit of local government may keep the moratorium in place only so long as is necessary to correct, modify, or resolve those conditions. Moratoria of more than 60 days are subject to the same hearing and notice requirements as apply

to amendments to zoning ordinances. A moratorium ordinance must state the problems giving rise to the moratorium, what action other than a moratorium the governing board considered to solve the problem, why that alternative course was not taken, the development approvals that will be subject to the moratorium, how a moratorium on those approvals will address the problem, a specific end date for the moratorium, why the moratorium needs to last that long, and what the government intends to do during the moratorium to address the problem. The governing board may not extend the moratorium unless it has taken all the reasonable and feasible steps it proposed to take to solve the problem and unless new facts and conditions warrant an extension. It also provides a person who is aggrieved by a development moratorium with a fast-track recourse to the courts for relief.

- Codifies court decisions allowing conditional zoning.

The act also allows cities and counties to enter into agreements to reimburse private developers or property owners for three kinds of improvements that would serve the development or property in question. The improvements are:

- The design and construction of municipal infrastructure that serves the developer or property owner.
- Public intersection and roadway improvements that are adjacent or ancillary to a private land development project.
- Public utilities improvements adjacent or ancillary to a private land development project.

The act also authorizes cities and counties to enter into agreements with developers. If the developer abides by the agreement, the developer obtains a vested right to proceed under the agreement and the laws in effect at the time the agreement was executed. Development agreements would be available only for property containing 25 acres or more of developable property and could last no longer than 20 years.

This act becomes effective January 1, 2006, although certain provisions allowing for temporary moratoria on zoning regulations became effective September 1, 2005. (KG)

Various Local Acts

S.L. 2005-433, Sec. 10 (HB 737, Sec. 10). See **Unified Government** under this section.

County Control/Noxious Aquatic Weeds

S.L. 2005-440, (HB 1281) allows the board of county commissioners in a county that adjoins or contains a lake, river, or tributary of a river or lake that has an identified noxious aquatic weed problem to define any number of noxious aquatic weed control service districts. The districts would have to be composed of property that is contiguous to the water or property that provides direct access to the water through a shared, certified access site to the water. The term "noxious aquatic weed" includes any plant organism identified by the Secretary of Environment and Natural Resources or regulated as a "plant pest" by the Commissioner of Agriculture.

This act became effective September 27, 2005. (JHM)

Local Government Stream Clearing/Clarify Liability

S.L. 2005-441 (HB 1029) makes clear that a municipality or a county that undertakes a program to remove debris and obstructions from streams must not be considered to have created or increased its responsibility for clearing or maintaining those streams. The local government also would not be deemed to have created an ownership interest in, or obligation to control the stream. However, the local government would still be liable for negligent actions

under otherwise applicable law and would have to obtain any required permits prior to undertaking a stream-clearing program.

This act became effective September 27, 2005, and applies to stream-clearing activities commenced on or after that date. (KG)

Clarify Regulation of Forestry

S.L. 2005-447 (SB 681) prohibits municipalities and counties from regulating forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes and forestry activity that is conducted in accordance with a forest management plan. The prohibition does not alter the authority of municipalities and counties to do any of the following:

- Regulate activity associated with development.
- Regulate trees pursuant to authority granted by the General Assembly.
- Adopt ordinances necessary to comply with any federal or State law, regulation, or rule.
- Exercise its planning or zoning authority.

This act became effective September 29, 2005. (EC)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 16
Military, Veterans' and Indian Affairs

Theresa Matula (TM) and Hal Pell (HP)

Enacted Legislation

Military and Veterans' Affairs

Federal Jurisdiction Over Land

S.L. 2005-69 (HB 236). See **State Government**.

Handgun Permit Renewal/Deployed Military

S.L. 2005-232 (SB 109). See **Criminal Law and Procedure**.

Increase the Maximum Monthly Pension Benefits for Retired Members of the North Carolina National Guard

S.L. 2005-276, Sec. 29.27 (SB 622, Sec. 29.27). See **Retirement**.

Adjutant General Change

S.L. 2005-314 (HB 62) deletes the designation of the Assistant Adjutant General of the Army National Guard as deputy commander of the State Area Command. Due to reorganization, there is no longer a "State Area Command." The new designation is "Joint Force Headquarters." Consequently, the act makes a technical change by deleting the Assistant Adjutant General as deputy commander of the organization.

This act became effective August 25, 2005. (HP)

North Carolina National Guard Tuition Assistance Program Changes

S.L. 2005-444 (SB 725) changes the amount of the benefit awarded to qualifying members of the North Carolina National Guard under the National Guard Tuition Assistance Act. The act provides that the amount cannot exceed the highest amount charged by a State educational institution per academic year or a lesser amount, as prescribed by the Secretary of Crime Control and Public Safety, and must be within the funds appropriated. Additionally, the act removes the previous benefit cap of $8,000 and adds a new subsection to allow reimbursement for required books and materials in a manner prescribed by the Secretary of Crime Control and Public Safety.

This act became effective July 1, 2005. (TM)

2005 Military Support Act

S.L. 2005-445 (SB 1117) provides funds for military morale, welfare, recreation services, and funds to acquire easements of land adjacent to military installations. The act also establishes policies and provides benefits to military members and their dependents. Part IA of the act:

- Directs an appropriation of $1 million for 2006-07 from the General Fund to a Reserve for the Military Morale, Recreation, and Welfare Fund. The act requires that funds be distributed to military installations on a per capita basis and used for community services and other expenditures to improve quality of life programs for members of the military and their families.
- Directs and appropriates $1 million for 2006-07 from the General Fund to the Conservation Grant Fund, to be used for compatible land use and conservation easement type acquisitions of land adjacent to military bases and flyways.

Part IA becomes effective July 1, 2006.

The Military Support Act also makes various other changes to laws that provide benefits for service members and their families. Listed below are the titles of the remaining Parts and references to the Chapters that contain their summaries.

- Part II: Encourage Certain Occupational Licensing Boards to Develop Policies for Expediting the Licensing Process for Military Spouses. See **Occupational Boards and Licensing.**
- Part III: New and Expanding Industry Training Program/Focused Industrial Training Program. See **Education.**
- Part IV: Allowing Members of the Armed Forces to Terminate Rental Agreements Early When Being Deployed. See **Property**.
- Part V: Directing the Department of Public Instruction to Study the Feasibility of a Liaison to the Military Bases in North Carolina. See **Education.**
- Part VI: Directing the State Board of Education and the Board of Governors of The University of North Carolina to Review and Revise the Policies and Procedures Regarding Credit for High School Courses to Ensure that All Students, Especially the Children of Military Personnel, Receive Credit for Courses Taken Out-of-State. See **Education.**
- Part VII: Allowing In-State Tuition at State Universities and Community Colleges for Retired Armed Services Personnel and their Dependents. See **Education.**
- Part VIII: A Student is Eligible to be Considered for Admission into the School of Science and Mathematics if the Student's Parent is an Active Duty Member of the Armed Services Stationed in this State at the Time the Student's Application is Submitted. See **Education.** (HP)

Indian Affairs

Hunting and Fishing on Tribal Land

S.L. 2005-285 (HB 1012). See **Agriculture and Wildlife**.

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 17
Occupational Boards and Licensing

Cindy Avrette (CA) and Judy Collier (JC)

Enacted Legislation

Code Officials Professionalism

S.L. 2005-102 (HB 658) directs the North Carolina Code Officials Qualifications Board (Board) to establish professional development requirements for building code officials as a condition of renewing or reactivating their licenses. The Board must begin to develop the program by October 1, 2005, and have the program ready for implementation no later than January 1, 2006.

This act became effective June 21, 2005, and applies to certificates issued or renewed on or after January 1, 2006. (CA)

Revise Professional Employer Organization Act

S.L. 2005-124 (SB 685) amends the North Carolina Professional Employer Organization Act (Act), enacted by the General Assembly in 2002. The act requires registration of professional employer organizations (PEOs) in the State; the General Assembly amended the Act in 2004 to require PEOs to be licensed by the Department of Insurance (Department), in addition to the Act's registration requirements. A "professional employer organization" is defined in Article 89A of Chapter 58 of the General Statutes as "a person that offers professional employer services." Typically, PEOs contract with businesses to provide human resource, employee benefit, payroll, and workers' compensation functions for the business. Under prior law, PEOs doing business in the State are required to file completed license applications by April 1, 2005. A violation of the Act is punishable by civil penalties and conviction of a Class H felony.

This act makes the following changes to the PEO Act:

- Current law requires an applicant for licensure to file with the Commissioner of Insurance (Commissioner) a surety bond in the amount of $100,000. The act amends this law to allow the issuer of the bond to cancel the bond, but only with respect to future obligations or liabilities under the bond. Likewise, a bond may be exchanged or replaced, but only if the new surety bond applies to obligations arising during the period of the original bond. However, a licensee must maintain a bond at all times and failure to do so will result in an automatic and immediate suspension of his or her PEO license.
- It establishes standards for de minimis registration status. To qualify for de minimis registration, the PEO must:
  - Not maintain a physical professional employer organization office in the State.
  - Not employ salespersons who reside or direct sales activities in the State.
  - Not employ directly or in common control with another person more than 50 assigned employees in the State.
  - Not advertise through any media outlet physically located in the State.
  - Be a licensed or registered PEO in at least one other state.
  - Be operated by and under control of persons of good moral character.
- It provides a process by which the Commissioner notifies a person of his or her ineligibility for de minimis registration and a review of the Commissioner's decision. The Commissioner also must notify a registrant of an incomplete registration and must allow a registrant 15 days from notification to correct the deficiency. After

approval of a de minimis registration, the registrant must notify the Commissioner annually of its continuing eligibility for de minimis registration status.

- It requires a PEO to certify to the Commissioner that it has provided its workers' compensation carrier with all proper and necessary documentation for the carrier to determine and charge a premium commensurate with anticipated claim experience. The PEO does not need to provide evidence of this documentation.
- It changes existing reporting requirements on the implementation, administration, and enforcement of the Act to require the Department to report to the 2007 General Assembly instead of the 2005 Session.
- It changes the deadline for filing a license application. Under prior law, a person who registered prior to the Act's effective date of January 1, 2005, could continue to operate pending approval of the person's application for licensure if the license application was filed no later than April 1, 2005. The act moves the deadline to file an application for licensing from April 1, 2005, to July 1, 2005. It also provides conditions under which a PEO that failed to register on or before December 31, 2004, may offer PEO services pending approval of license application. For this provision to apply, the license application must be submitted on or before July 1, 2005. In addition, for initial license applications received prior to July 1, 2005, the Commissioner must accept a GAAP financial statement prepared within the previous 180 days. The statement must cover a fiscal year ending December 31, 2004, or later. This provision became effective March 31, 2005.
- It provides that money from the Insurance Regulatory Fund may be used to reimburse the General Fund for money appropriated to the Department for regulation of PEOs.

Except as otherwise noted in this summary, this act became effective June 29, 2005. (CA)

Authorize Social Work Board to Employ Personnel

S.L. 2005-129 (HB 1262) authorizes the North Carolina Social Work Certification and Licensure Board to employ personnel necessary to carry out the provisions of the Social Work Certification and Licensure Act.

This act became effective June 29, 2005. (CA)

Amend Certain License Requirements/Plumbing/Heating Contractors

S.L. 2005-131 (SB 178) amends the licensing laws for plumbing and heating contractors to allow the licensing examination to be passed in parts, to allow a person licensed after October 1 of any year to pay half the usual licensing fee and to set the fee for each exam at $100.

This act becomes effective January 1, 2006. (CA)

Authorize Competency Requirement/North Carolina Board of Nursing

S.L. 2005-186 (SB 3) amends the Nursing Practice Act to permit the Board of Nursing to adopt rules requiring applicants to submit evidence of continuing competency in the practice of nursing at the time an applicant submits an application for renewal or reinstatement.

This act became effective July 12, 2005. (CA)

License Insurance Statistical Organizations

S.L. 2005-210 (HB733). See **Insurance**.

Amend Private Protective Services Laws

S.L. 2005-211 (SB 778) authorizes a person licensed to provide private protective services to employ unarmed security guards as probationary employees for 20 days if the licensee files a monthly report. The licensee must register the employee within 30 days after the probationary period ends if the licensee wishes to hire the employee as a regular employee. Before a probationary employee may engage in private protective services, the employing licensee must conduct a criminal record check of the employee and the employee must complete training requirements. The act also provides that a person licensed by the North Carolina Private Protective Services Board as an armed security guard is considered to have satisfied the approved firearms safety and training course requirement for a concealed handgun permit if the person already has an armed security guard firearm registration permit.

This act became effective July 20, 2005, and applies to permit applications submitted on or after that date. (CA)

State Bar/Appeal/Fee

S.L. 2005-237 (HB 896) does two things. First, it provides that either party may appeal the final order of the Disciplinary Hearing Commission to the North Carolina Court of Appeals. This appeal of right would apply to both the State Bar and the attorney who is a party to the disciplinary action. Unlike prior law, this provision would allow the State Bar to appeal from a final order when no discipline is imposed. Second, the act increases the annual membership fee from an amount not to exceed $200 to an amount not to exceed $300.

This act became effective July 29, 2005, and applies to final orders of the Disciplinary Hearing Commission issued on or after that date. (CA)

Agent/Bail Bonds Applicant Petition Deadline

S.L. 2005-240 (SB 707) makes clear that if a person denied a license to be an insurance agent, bail bondsman, or bail bondsman's runner wants a review of that denial, that person must demand a review within 30 days. It also authorizes the Commissioner of Insurance to select a bank or trust company as a master trustee to hold cash securities deposited by a professional bail bondsman and to authorize the master trustee to charge against that account reasonable fees for services rendered in connection with the trust's operation. The Commissioner may sell or transfer any securities in trust or use the proceeds of those securities to satisfy the bail bond liabilities of the bondsman.

This act became effective October 1, 2005, and applies to all notices of applications denied by the Commissioner served on or after that date and to all notices of review outcomes served on or after that date. (CA)

Perfusionists Licensure

S.L. 2005-267 (SB 1059) prohibits a person from practicing perfusion without a license, effective July 1, 2006. A perfusionist is the person responsible for the selection, set-up, and operation of the cardiopulmonary bypass systems during cardiac surgery cases. Perfusionists may practice perfusion only under the supervision of a licensed physician. The act creates the North Carolina Perfusion Advisory Committee. The Advisory Committee would be responsible for

licensure, regulation, and discipline of perfusionists. All actions by the Committee, other than internal committee matters, must be reported to and approved by the North Carolina Medical Board in order to become effective, and the North Carolina Medical Board receives and controls the licensing fees.

This act became effective August 12, 2005. (CA)

Exempt Community College Massage and Bodywork Therapy Programs from Licensure by the North Carolina Board of Massage and Bodywork Therapy

S.L. 2005-276, Sec. 8.15 (SB 622, Sec. 8.15). See **Education**.

Use of Medication Aides to Perform Technical Aspects of Medication Administration in Skilled Nursing Facilities

S.L. 2005-276, Sec. 10.40C (SB 622, Sec. 10.40C). See **Senior Citizens**.

Code Enforcement Official Exam Fees

S.L. 2005-289 (HB 736) enables the North Carolina Code Officials Qualification Board (Board) to offer certification examinations across the State on any date arranged by the inspector and the examination firm by imposing an examination fee of up to $125. The fee would be payable to the testing firm that administers the Board's exams. The Board's intent is to offer examinations within approximately 120 miles of all inspection departments. Part I also provides for an examination review fee of up to $50.

In S.L. 2004-199, the General Assembly allowed a horizontal travel distance of 300 feet for access to public use toilets in covered mall buildings. The provision applied to covered malls for which building permits were issued on or before December 1, 2005. Part II of this act removes the sunset.

Part I of this act became effective October 1, 2005, and applies to applications made on or after that date. The remainder of the act became effective August 22, 2005. (CA)

Part III concerns an exemption for electric generating facilities. For additional information on this Part, see **Health and Human Services**.

Amend Certain Land Surveyor Licensure Requirements

S.L. 2005-296 (HB 810) increases the experience requirements for professional land surveyors and land surveyor interns. It provides that an applicant for a professional land surveyor license who has not passed the Fundamentals of Surveying exam (first exam) by January 1, 2013, must meet the following additional experience requirements, which vary by an individual's degree: (1) bachelor of science degree in surveying – 2 years of experience working with a practicing professional land surveyor; (2) associate degree in surveying technology – 8 years of experience, 4 of which must have been with a professional land surveyor; (3) high school graduate – 16 years of experience, 9 of which must have been under a practicing professional land surveyor. It provides that land surveyor applicants with an associate degree who have not passed the first exam by January 1, 2013, may take the exam after 4 years of experience, 2 of which must be under a professional land surveyor; and that high school graduates who have not passed the first exam by January 1, 2013, may take the exam after 10 years of experience, 6 of which must be with a professional surveyor. It requires that an applicant for a land surveyor intern license with an associate degree must have 4 years of experience, 2 years of which must

be with a professional land surveyor; and that an applicant with a high school degree must have 10 (was 5) years of experience, 6 (was 4) with a professional land surveyor. Lastly, it requires that a graduate of a surveying curriculum or a student who has attained senior status in accredited program for 4 years or more be allowed to take the Fundamentals of Surveying exam.

This act became effective August 22, 2005. (CA)

Amend Interpreter/Transliterator License Act

S.L. 2005-299 (HB 1507) amends the Interpreters and Transliterator Licensure Act as follows:

- Exempts from licensing requirements nationally certified interpreters or transliterators who provide services in North Carolina for no more than 20 days a year.
- Authorizes additional persons to obtain a provisional license.
- Authorizes the Board to conduct administrative hearings in accordance with Chapter 150B of the General Statutes.
- Authorizes the Board to assess civil penalties not to exceed $1,000 for violations of Chapter 90D of the General Statutes.

This act became effective August 22, 2005. (CA)

Revise Mortgage Lending Act

S.L. 2005-316 (HB 237). See **Commercial Law and Consumer Protection**.

North Carolina Dental Board/Exams and Real Property

S.L. 2005-366 (SB 711) authorizes the North Carolina State Board of Dental Examiners to accept the results of Board-approved regional or national independent third-party clinical examinations of applicants seeking a license to practice dentistry. It also authorizes the North Carolina State Board of Dental Examiners to acquire real property.

This act became effective September 8, 2005. (CA)

Real Estate Commission and Broker Law Changes

S.L. 2005-374 (SB 895) allows the Real Estate Commission (Commission) to set for its board members and staff its own rate for per diem, authorizes mileage reimbursement at the business standard mileage rate established by the IRS, and authorizes the Commission to deposit its funds in the same types of accounts and investments that other public authorities are authorized to use. The act also makes clear that the Commission may take disciplinary action against a licensed broker for commingling other people's money with the broker's money, or failing to properly deposit or account for the funds of others held by the broker, even if the funds are lawfully held in circumstances for which a real estate license is not required or in a situation that is not a real estate transaction. The primary example would be real estate brokers who act as property manager for homeowner associations and handle funds of the association.

This act became effective September 8, 2005. (CA)

Update Certification/Licensure/Recreational Therapy

S.L. 2005-378 (HB 613) rewrites Chapter 90C (Chapter) of the General Statutes as follows:

- Changes the name of the Chapter from "Therapeutic Recreation Personnel Certification Act" to "North Carolina Recreational Therapy Licensure Act."
- Changes certification to licensure and changes the titles of licensees. The current law authorizes certification as a therapeutic recreation specialist or a therapeutic recreation assistant. This act authorizes the licensure of a recreational therapist and licensed recreational therapy assistant and defines a "recreational therapy aide" as a non-licensed person who aids in providing recreational therapy services under the direct supervision of a licensed recreational therapist or licensed recreational therapy assistant.
- Adds an additional member to the North Carolina Recreational Therapy Licensure Board (Board), (formerly named the North Carolina State Board of Therapeutic Recreation Certification). The new member must be appointed by the Governor and must be a physician licensed in North Carolina.
- Gives the Board power to:
  - Issue annually a list of persons currently licensed under the Chapter.
  - Establish or approve competency requirements for licensure, including examinations and continuing education.
- Sets out the requirements for licensure as a recreational therapist or recreational therapy assistant. Any current State-certified person working in the scope of recreational therapy before January 30, 2006, is exempt from all educational, examination, and experience requirements for initial licensure under the Chapter if the person applies to the Board for licensure before January 15, 2008. The applicant must also be working within the scope of recreational therapy and previously certified by the Board at the time of application.
- Amends the maximum fees of the Board as follows: Initial application for licensure – $200; licensure renewal fee – $200; record maintenance fee – $100; inactive fee – $50.
- Provides that the Chapter does not apply to incidental work by persons licensed in another profession, federal employees, or students pursuing a degree in recreational therapy and fulfilling supervised fieldwork requirements.
- Makes it a Class 1 misdemeanor with a maximum fine of $500 for a person not licensed under the Chapter to represent himself or herself as licensed or to practice recreational therapy or therapeutic recreation. Current law provides for a maximum fine of $500 and/or imprisonment not to exceed 60 days if a person holds himself or herself out to be certified without first having been certified under the Chapter.

This act became effective October 5, 2005. (CA)

Amend Acupuncture Laws/Fees

S.L. 2005-379 (HB 1357) makes the following changes to the statutes governing the Acupuncture Licensing Board:

- Authorizes the Board to hire professional advisors, including legal counsel, and to fix their compensation.
- Allows licensure of applicants licensed for at least 10 years in another state if the applicant has no disciplinary actions in that period and meets minimum continuing education standards. The licensure requirements in the other state must meet or exceed those of North Carolina.
- Adds requirements for renewal of licenses.
- Adds new language providing for an inactive license and for the renewal of suspended, expired, and lapsed licenses.
- Increases some fees related to licensure and adds new fees.

This act became effective September 8, 2005. (CA)

General Contractors/Fees/Cost Recovery

S.L. 2005-381 (SB 1013) authorizes the State Licensing Board for General Contractors to increase its licensing fees. Effective October 1, 2005, the Board may recover its reasonable administrative costs associated with the investigation and prosecution of certain violations of the general contractors' licensing laws.

Except as otherwise noted in the summary, this act became effective September 8, 2005. (CA)

Improve Real Estate Licensing Law

S.L. 2005-395 (HB 1284) makes the following changes to the real estate licensing law:

- It eliminates the licensed position of real estate salesperson as of April 1, 2006, converts all current real estate salespersons to provisional brokers, and establishes a procedure for real estate salespersons to become real estate brokers, and for some real estate brokers to become brokers-in-charge.
- It changes the number of prelicensing classroom hours needed to become a real estate broker from 60 hours in addition to the 67 hours for a real estate salesperson license to a single course of 75 hours. It provides that all provisional brokers will have to complete an additional 90-hour post-licensing course within 3 years after being licensed as a provisional broker in order to become a real estate broker. Failure to complete the postlicensing course within 3 years will result in the license being cancelled until the course is completed. A provisional broker is exempt from the 90-hour postlicensing course if he or she possesses equivalent real estate education or experience.
- It defines a broker-in-charge, being someone under whose supervision a provisional broker may work, as a real estate broker with at least 2 years of brokerage experience and the completion of a broker-in-charge course not to exceed 12 hours.
- It sets out the transition process for converting real estate salespersons to real estate brokers and prescribes qualification requirements for brokers-in-charge. On April 1, 2006, all salesperson licenses will be converted to broker licenses and the holder of the broker license will be classified as a provisional broker. A provisional broker who was issued a salesperson license prior to October 1, 2005, may terminate provisional status by completing one of the following requirements by April 1, 2008. If the provisional broker fails to satisfy one of 2 requirements by April 1, 2008, then he or she must take the 90-hour postlicensing course.
  - Complete a broker transition course not to exceed 24 classroom hours.
  - Demonstrate to the North Carolina Real Estate Commission (Commission) that he or she possesses four years of full-time real estate brokerage experience or equivalent part-time brokerage experience within the previous six years.
- A provisional broker who was issued a salesperson license between October 1, 2005, and March 31, 2006, may become a broker by completing one of the following requirements by April 1, 2009. If the provisional broker fails to satisfy one of the two requirements by April 1, 2009, then his or her broker license is cancelled.
  - Satisfactorily complete the 90-hour postlicensing course.
  - Possess equivalent real estate education or experience in real estate transactions.
- A person licensed as a broker prior to April 1, 2006, must not be required to take the 90-hour postlicensing course.
- No applications for a real estate salesperson license will be accepted between September 1, 2005, and September 30, 2005.

- It requires all provisional brokers to work under the supervision of a broker-in-charge until they fulfill the requirements to be licensed as a broker.
- It authorizes the Commission to take custody of documents or materials obtained by subpoena in order to photocopy them. Current law only allows the Commission to examine the documents or materials obtained by a subpoena.
- It provides that an applicant from a reciprocal state has 90 days after establishing residency in North Carolina to obtain a North Carolina license without taking the licensing examination.
- It authorizes the Commission to require brokers who are designated as brokers-in-charge to complete a special continuing education course not to exceed four hours per annual license period as part of their regular broker continuing education requirement, which is eight hours per year. This provision became effective October 1, 2005.
- It adds a new section to Article 1 of Chapter 93A of the General Statutes to provide that a broker may deposit with the clerk of court, disputed earnest money, other than a residential security deposit, for determination of the rightful owner. The broker must provide notice to the persons claiming ownership that the money is to be deposited and that the person may initiate a special proceeding with the clerk of court to recover the disputed monies. In order to give the parties an opportunity to settle the dispute, the monies may not be deposited until 90 days following notification. Current law requires a broker to hold disputed earnest monies until the parties resolve ownership, which may never happen. This provision became effective October 1, 2005.
- It makes technical and conforming changes to the real estate licensing law to reflect the changes made by the act.

Except as otherwise noted in the summary, the act becomes effective April 1, 2006. (CA)

North Carolina State Bar Changes/Fees

S.L. 2005-396 (SB 327) authorizes the imposition of a $15 late fee for district bar dues and increases from $100 to $125 the fee for out-of-state attorneys practicing in North Carolina. It also gives explicit authority to the State Bar to impose several other charges that it now collects under the assumption that its general authority allows such collections. It also makes some other changes to the statutes concerning attorneys.

This act became effective September 14, 2005, and applies to fees assessed on or after that date. (CA)

Raise Ceiling on Fees/Board of Pharmacy

S.L. 2005-402 (HB 1349) requires the Board of Pharmacy to annually expend at least $100,000 of licensure and registration fees for a Pharmacy Recovery Network. It distinguishes between minor violations of the Pharmacy Practice Act (Act) and violations that threaten public safety, health, or welfare. Under existing law, the director must investigate any violation of the Act, no matter how minor. This change clarifies that the director is required to investigate any threat to public safety, health, or welfare, but it is within the discretion of the director to investigate minor violations of the act. Effective October 1, 2005, it authorizes the Board to raise its licensure and registration fees, to establish new fees, and to increase registration fees for **out-of-state operations** that ship, mail, deliver, or dispense drugs in this State. The pharmacy must register annually with the State. Effective January 1, 2008, it authorizes the Board to require up to 30 hours of continuing education every 2 years, with a minimum of 10 hours required per year. Lastly, it makes several changes regarding fees to be paid to the North Carolina Medical Board.

Except as otherwise noted in the summary, this act became effective September 19, 2005. (CA)

Pharmacy Quality Assurance Protection Act

S.L. 2005-427 (HB 1493) establishes the Pharmacy Quality Assurance Protection Act (Act). The Act facilitates a process for the continuous review of the practice of pharmacy at the pharmacy level and provides some statutory guidelines for investigations of pharmacists by the Board of Pharmacy.

The Act provides that persons or entities holding valid pharmacy permits either must establish or participate in a pharmacy quality assurance program. The purpose of the program is to evaluate the following:

- Quality of practice of the pharmacy.
- Cause of medication errors.
- Pharmaceutical care outcomes.
- Possible improvements for the practice of pharmacy.
- Methods to reduce medication error occurrences.

The Act also sets forth provisions on how and when the Board of Pharmacy can request information about an alleged medication incident or error from a pharmacy or its designated agent. The provisions set forth in the act supersede all administrative rules regulating the maintenance of alleged medication error or incident records in effect as of January 1, 2006.

This act becomes effective January 1, 2006. (CA)

Amend Substance Abuse Laws

S.L. 2005-431 (SB 705) provides for the licensure of substance abuse professionals; establishes the credential of a certified criminal justice addictions professional; requires that applicants for registration, certification, or licensure consent to a criminal history record check; and makes a range of technical and conforming changes to the existing North Carolina Substance Abuse Professionals Certification Act. The act charges the North Carolina Substance Abuse Professional Certification Board with credentialing and licensing qualified substance abuse professionals rather than certifying them as is currently the case and changes the Board's name to the North Carolina Substance Abuse Professional Practice Board to reflect its new role.

This act became effective September 22, 2005. (CA)

Amend Occupational Therapy Laws/Fee

S.L. 2005-432 (SB 208) amends the North Carolina Occupational Therapy Practice Act by creating statutory revisions and modifications to the provisions regulating the practice of occupational therapy based on recommendations of a task force with representatives from the North Carolina Occupational Therapy Association, universities, community colleges, rehabilitation facilities, hospital-based practice, home health, school based practice, and independent practice. The act also raises the ceiling on the fee for a limited permit from $35 to $50 and provides that this fee will expire October 1, 2007.

The task force created by the North Carolina Board of Occupational Therapy made efforts to achieve consistency with the model standard established by the American Occupational Therapy Association. This act makes the following changes to the North Carolina Occupational Therapy Practice Act:

- It increases the number of members on the North Carolina Board of Occupational Therapy from six to seven, establishes staggered terms of four years for members, and requires one member to be a counselor, educator, or school-based professional

certified or licensed under North Carolina law employed in a public school system and is not an occupational therapy assistant or an occupational therapist.

- It provides that the Board must communicate disciplinary actions to relevant government authorities including State, federal, and other state occupational therapy licensing authorities.
- It provides that the licensure examination must be approved by the Board, instead of created by the board, substitutes the licensure requirement of the successful completion of at least six months supervised field work with the completion of supervised field work for a duration as determined by the Board, and establishes education and examination requirements for occupational therapists trained outside the United States.
- It allows exemption from certain licensure requirements for applicants who are currently licensed as occupational therapists or occupational therapy assistants in other states or the District of Columbia and includes the United States territories of Guam and Puerto Rico.
- It creates a limited permit that allows an individual to practice as an occupational therapist or occupational therapy assistant for up to 120 days or until notification of a failed examination. The provisions of this section will expire October 1, 2007.
- It adds competency requirements to the renewal provisions of Article 18D of Chapter 90 of the General Statutes (Article).
- It adds new grounds for suspension, revocation, or refusal to renew a license.
- It provides that any person who resides in another state or country, is unlicensed in North Carolina, and is performing any act described as the practice of occupational therapy pursuant to the provisions of this Article is regarded as practicing without a license.
- It authorizes the Board to assess a civil penalty not to exceed $1,000 for a violation of any provision of the act.
- It provides that the practice of occupational therapy by an occupational therapist or assistant licensed in another jurisdiction who comes to North Carolina on an irregular basis to consult about education and training with a North Carolina licensed therapist, occupational therapy assistant, or faculty at an academic facility is not restricted by the provisions of this Article.

This act became effective September 22, 2005. (CA)

2005 Military Support Act

S.L. 2005-445, Part II (SB 1117, Part II) encourages each occupational licensing board in the State to develop policies that would make the licensing process for military spouses more efficient and expedient. Boards are directed to review their current licensing procedures as it relates to military personnel. The boards may develop and implement policies regarding licensure that provide for assistance to military spouses and dependents to facilitate a smooth transfer. Implementation of these policies does not apply to occupational licensing boards that regulate health care professionals. This part does not apply specifically to health professions or teaching.

This part became effective September 28, 2005.

Part I of this act makes findings and appropriations for support of military operations. For additional information see **Military, Veterans' and Indian Affairs**.

Part III and Parts V through VIII relate to education. For additional information, see **Education.**

Part IV allows members of the armed forces to terminate rental agreements early when being deployed. For additional information, see **Property**. (HP)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 18
Property, Trusts, and Estates

Karen Cochrane-Brown (KCB), Kory Goldsmith (KG), Trina Griffin (TG),
Walker Reagan (WR), and Steve Rose (SR)

Enacted Legislation

Satisfaction of Mortgages and Deeds of Trust

S.L. 2005-123 (SB 734). See **Commercial Law and Consumer Protection**.

Reduce Holding Period for Unclaimed Property

S.L. 2005-132 (HB 672) reduces, from five to three years, the amount of time a holder of unclaimed stocks, other equity interests, or debt of a business association, would have to wait before the property is deemed abandoned and is to be turned over to the State Treasurer's Office for deposit into the Escheats Fund. The act adds another method for holders of this abandoned property to determine the property is abandoned based upon the date the holder discontinues mailings to the owner. The act clarifies that abandoned debt of a business includes debt evidenced by a matured or called bearer bond. The act also adds a new classification of abandoned property to include interest payments, cash compensation (including amounts from a demutualized insurance company), stock redemptions and special dividends that remain unclaimed by the owner for three years.

This act became effective June 30, 2005. (WR)

Order of Payment/Equitable Distribution

S.L. 2005-180 (HB 804) clarifies that the priority system for payment of claims against a decedent's estate, as set out in G.S. 28A-19-6, applies to a claim for equitable distribution and establishes that an equitable distribution claim would be in a new separate class above the final class of all other claims. Equitable distribution claims would be treated as a seventh class claim and all other claims not included in the first seven classes of claims would be treated as eighth class claims.

This act became effective July 12, 2005, and applies to the estates of persons who died on or after June 12, 2003, provided that an agreement entered into or performed pursuant to G.S. 28A-19-19(b) before the effective date is not affected by this act. (WR)

North Carolina Uniform Trust Code

S.L. 2005-192, Secs. 1, 2, 4, and 5 (SB 679, Secs. 1, 2, 4 and 5) repeal Chapter 36A of the General Statutes - Trusts and Trustees, and replace it with Chapter 36C – North Carolina Uniform Trust Code.

Sections 1, 2, and 4 of the act recodify much of the existing North Carolina trust law that had been adopted either by statute or common law. The law as enacted by Sections 1, 2, and 4:

- Applies only to express trusts, private and charitable trusts, and inter vivos and testamentary trusts, but not to constructive or resulting trusts.
- Serves as a default statute that can be overridden specifically by the instrument creating the trust in most situations.
- Confirms the principle that trusts are not generally subject to judicial supervision.

- Reduces the number of incidences where guardians ad litem need to be appointed.
- Retains the previous North Carolina law concerning enforcement and administration of charitable trusts and the Prudent Investor Act.
- Recognizes spendthrift trusts and clarifies the rights of creditors to reach assets in spendthrift trusts and non-spendthrift trusts.
- Creates a presumption that a trust is revocable unless expressly provided otherwise.
- Permits the appointment of a successor trustee by consent of the beneficiaries without court action, even when trust instrument is silent on this point.
- Modernizes conflict of interest rules for trustees.

Section 5 of the act amends G.S. 28A-13-6 which governs the exercise of powers of joint personal representatives by one or more personal representatives, by expanding the powers that may be exercised by only one personal representative when agreed to by all personal representatives. In addition to the powers that may currently be exercised by a sole joint personal representative, a sole joint personal representative may also maintain inventories, accountings and income and expense reports of the estate, employ brokers, appraisers and custodians, release in whole or part a claim belonging to the estate, and may perform any function relating to investing estate assets.

Sections 1, 2, 4, and 5 of this act become effective January 1, 2006, and apply to trusts created before, on, or after that date, except as otherwise expressly provided in the trust instrument.

Section 3 of this act enacts the North Carolina Community Trust for Persons With Severe Chronic Disabilities Act. For additional information on this section, see **Health and Human Services.** (WR)

Subordination Agreement/Registration Amendments

S.L. 2005-212 (SB 667) amends statutory provisions adopted in 2003 relating to subordination agreements. The 2003 act (S.L. 2003-219) provides that a subordination agreement is not required to state the financial terms of the instrument to which it will be subordinate. This act makes the application of those provisions adopted in 2003 applicable to all subordination agreements, regardless of when filed, except subordination agreements that were recorded before October 1, 2003 (the effective date of the 2003 act) and that were the subject of litigation pending on July 20, 2005.

This act became effective July 20, 2005. (SR)

Child's Allowance From Estate

S.L. 2005-225 (SB 533) amends the law providing for a child's allowance from the estate of a deceased parent to eliminate the requirement that the amount of the allowance be adjusted by the value of any articles consumed by the child since the time of the parent's death.

This act became effective October 1, 2005, and applies to estates of persons dying on or after that date. (WR)

North Carolina Lien Law Revised

S.L. 2005-229 (SB 887) amends Chapter 44A of the General Statues, the mechanics and materialmen lien law, by clarifying which sections apply to liens on real property and which apply to liens on funds. The act authorizes liens signed by attorneys licensed in North Carolina to be filed on behalf of their clients. The act clarifies that a claimant need not file a notice of lis pendens in the county where the claim of lien and the lien enforcement lawsuit are filed. The act amends the law on service of liens on obligors to permit service by any means permitted under Rule 4 of the Rules of Civil Procedure. The act provides that any bond deposited to discharge a

claim of lien on funds is also effective to discharge any claim of lien on real property that arises from the lien on funds. The bond also discharges the claim of lien on funds by lower tier subcontractors, up to the amount of the bond. The act amends the law to provide that when funds in the hands of the obligor, whether the contractor, subcontractor, or owner of the real property, are insufficient to cover all valid liens, the parties entitled to the lien on funds must share the funds on a pro rata basis.

This act became effective October 1, 2005, and applies to claims of lien on real property filed and notices of claims of liens on funds served on or after that date. (WR)

Unitrust Amendments

S.L. 2005-244 (SB 461) amends that portion of the Uniform Principal and Income Act, specifically related to the conversion of unitrusts. It authorizes express total return unitrusts to conform with IRS regulations. The act adds a new section authorizing a trustee to convert a wholly charitable trust to a unitrust under certain conditions. It also provides that the value of certain property received by a trust beneficiary, such as a residence or tangible personal property, does not have to be included in the computation of the unitrust distribution. Under the act, a marital deduction or generation skipping transfer tax is not to be considered in determining the minimal income distribution from the trust. (Previously, a marital deduction or generation skipping transfer tax was to be considered.)

The act also authorizes the creation of express total return unitrusts so that the revised IRS regulations will apply to trusts drafted originally as unitrusts. An express total return unitrust is a trust that has a governing instrument requiring at least annual distributions equal to a fixed percentage of 3% to 5% per year of the net fair market value of the trust's assets, which must be valued at least annually. This new Part 2A would allow marital deduction trusts originally drafted as unitrusts to provide for the distribution of the unitrust amount only and not the greater of the unitrust amount or the income of the trusts.

This act became effective July 30, 2005, and applies to trusts and decedent's estates existing or coming into existence on or after that date, except as expressly provided in the will, the trust, or Article 37A of the General Statutes. A change made to G.S. 37A-1-104.9(iii) in Section 5 of the act applies retroactively to October 1, 2004. (WR)

Interstate Trust Services on Reciprocal Basis

S.L. 2005-269 (SB 519). See **Commercial Law and Consumer Protection**.

Account Transfers and Agency Appointments

S.L. 2005-274 (SB 517). See **Commercial Law and Consumer Protection**.

Medicaid Estate Recovery to Include Liens on Real Property

S.L. 2005-276, Sec. 10.21C (SB 622, Sec. 10.21C). See **Senior Citizens**.

Manufactured Homes/Longer Termination Notice

S.L. 2005-291 (HB 1243) lengthens the notice period required for the termination of a tenancy for the rental space for a manufactured home from 30 to 60 days.

This act becomes effective January 1, 2006, and applies to all notices to quit given on or after that date. (KG)

Vacation Rental Act Amendments

S.L. 2005-292 (HB 1240) amends the Vacation Rental Act to clarify that except when the premises are not fit or habitable due to circumstances for which travelers insurance was offered or obtained for circumstances arising as a result of a mandatory evacuation, the landlord must refund to the tenant all payments made by the tenant. The act allows a person who sells vacation rental property up to 10 days after the transfer of the property (currently 10 days after entering the contract) to furnish the buyer of the property with the names and leases of all pending vacation rentals on the property. The act simplifies the way this information can be transferred and does not require the transfer when both the seller and buyer use the same rental agent. The act also standardizes the application of the mandatory evacuation order to tenants whether or not they have taken possession of the rental property.

This act became effective October 1, 2005, and applies to vacation rental agreements entered into, on, or after that date. (WR)

Department of Transportation Relocation Assistance Change

S.L. 2005-331 (HB 1266) increases the amount the Department of Transportation (DOT) and other State agencies must pay as relocation assistance for reasonable expenses for searching for a replacement business or farm as required by new federal regulations. Under current law, DOT and other State agencies are required to pay relocation assistance to persons displaced by a State project. This law was enacted in response to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which requires States to pay relocation assistance to persons dislocated by federally funded projects. As a part of relocation assistance, the State is currently required to pay up to $1,000 in reasonable expenses for searching for a replacement business or farm. A recently adopted federal regulation requires states to pay up to $2,500 in reasonable expenses for searching for a replacement business or farm for any federally funded State project. This act conforms State law to the new federal regulation.

This act became effective August 26, 2005. (KCB)

Testamentary Recommendation of Guardian

S.L. 2005-333 (HB 1394) allows the parent of an unmarried adult who has been adjudicated as incompetent to recommend a guardian for the incompetent adult by will or other writing. The parent may specify any limitations on the powers to be given to the guardian. If both parents make recommendations, the will with the latest date prevails in the absence of other relevant factors. The act directs that the clerk must use the recommendation of the parent as a guide in selecting a guardian, but the clerk is not bound by the recommendation if the clerk determines that a different appointment is in the incompetent person's best interest. The act provides that the guardian designated in the will must be the first in the priority list considered by the clerk for the appointment of a guardian. The will recommending a person to be appointed as a guardian for an incompetent adult can also recommend that the guardian not be required to post a bond; however, the clerk can find it as a fact that the interest of the incompetent adult would be served best by requiring a bond of the guardian.

This act became effective August 26, 2005. (WR)

Health Care Power of Attorney/Disposition of Remains

S.L. 2005-351 (HB 967) extends a health care power of attorney past the death of the principal for purposes of the attorney-in-fact exercising explicitly granted rights with respect to decisions of anatomical gifts, autopsy, and disposition of remains. It amends the definitions applicable to the creation of health care powers of attorney to define "disposition of remains" to

mean the decision to bury or cremate human remains, makes a conforming change in the statutory short form health care power of attorney, and makes conforming changes to the statutes governing autopsies, anatomical gifts, and disposition of remains to allow for the health care agent to make decisions with regard to those actions.

This act became effective October 1, 2005, and applies to powers of attorney created before and after that date. (KG)

Commissions for Personal Representatives

S.L. 2005-388 (HB 561) amends the law regarding the calculation of commissions for persons who administer estates. It gives the clerk of superior court the discretion to not reduce the commission by amounts paid for professional services such as attorneys' fees, accountants' fees, and tax advisory fees. It also provides that the maximum statutory commission of 5% would not apply to situations where the testator's will or a contract specifies a stipulated amount or method for determining compensation of the personal representative. However, the statutory maximum would apply if the provisions of the will would have the effect of increasing the commission so that the estate would be unable to pay all the claims against the decedent.

This act becomes effective January 1, 2006, and applies to commissions paid on or after that date. (KG)

Real Property Electronic Recording/Notary Act

S.L. 2005-391 (SB 671) enacts two distinct new acts, the Uniform Real Property Electronic Recording Act and a new Notary Public Act.

The Uniform Real Property Electronic Recording Act

Sections 1 and 2 of the act provide a method for electronic recording of real property documents. These sections:

- Contain key definitions for "electronic," "electronic signature," "document," and "electronic document" that were taken from or based on definitions in the Uniform Electronic Transactions Act (UETA), found in Article 40 of Chapter 66 of the General Statutes.
- Provide that electronic documents and electronic signatures are acceptable for recording purposes. Although nothing in UETA prevents that act from applying to electronic real property documents, which are apparently valid and enforceable as between the parties under UETA, there is no broad agreement nationwide that these documents can be recorded. This provision also eliminates any requirement that a notary's electronic stamp or seal be an actual image. The North Carolina Board of Examiners for Engineers and Surveyors may require that the image of a seal accompany a plat or map.
- Authorize registers of deeds to accept electronic documents for recordation but require conformity with standards adopted by the Secretary of State to implement this act. This provision does not compel a register of deeds to implement electronic recording.
- Authorize the Secretary of State to adopt standards to implement this act on the recommendation of a new advisory body, the Electronic Recording Council (Council). The Council is responsible for developing and recommending to the Secretary of State initial standards to implement the act and, on an ongoing basis, any changes to the standards that may be needed. This provision allows the Secretary of State to direct the Council to revise any portion of the Council's recommended standards that the Secretary determines to be out of compliance with existing law or not consistent with necessary nationwide standards.

- The 13-member Council consists of the Secretary of Cultural Resources, or designee, and members appointed by the North Carolina Association of Registers of Deeds, the North Carolina Bar Association, the North Carolina Society of Land Surveyors, the North Carolina Bankers Association, the North Carolina Land Title Association, and the North Carolina Association of Assessing Officers.
- The Council and the Secretary of State are to consider a list of factors in adopting standards, incorporating standards for accuracy and security, including standards set by national bodies and by other jurisdictions, and uniformity of interpretation as a goal among states adopting this act.

Notary Public Act

Sections 3 and 4 of the act repeal Chapter 10A of the General Statutes, the existing Notary Public Act, and enact Chapter 10B, the new Notary Public Act. The act makes the following changes to the previous law:

Article 1 adds the following changes to the original act governing notary commissioning, notarial acts, powers and limitations, fees, signature and seals, and certification forms:

- Additional purposes to:
  - Foster ethical conduct among notaries.
  - Enhance cross-border recognition of notary acts.
  - Integrate traditional paper and electronic notarial acts.
- New requirements for becoming a notary, including being a United States resident; speaking, reading, and writing English; and possessing a high school diploma or its equivalent.
- Grounds under which a notary commission may be denied to include submission of an incomplete application or an application containing a material misstatement or omission of fact, and a finding or admission of liability against an applicant in a civil lawsuit based on the applicant's deceit.
- Increases the educational requirements for commission of non-attorneys to include six hours (now, between three and six hours) approved by the Secretary of State and taken within the three months preceding the application. A minimum passing grade of 80% on the written exam is required. The act requires that non-attorney notaries seeking recommissioning must pass a written exam. Licensed members of the North Carolina Bar have no additional educational requirements and do not have to take the exam.
- New conditions that disqualify a notary from performing a notarial act including:
  - Absence and inadequate identification of a principal.
  - A principal's demeanor that causes the notary to have compelling doubt about whether the principal knows the consequences of the transaction.
  - Appearance that the principal is not acting with free will.
- New sections to prohibit certain kinds of execution and notarization, including executing documents that:
  - Contain information known by the notary to be false.
  - Are not in the English language.
  - Notarize blank signature lines.
  - Notarize or authenticate photographs.
- Increases the maximum fee for notarial acts from $3 to $5.

Article 2 enacts new law that authorizes and creates standards for electronic notary acts (e-notaries) and includes the following:

- Requirements for a person to be an electronic notary including the basic requirements for being a notary, plus taking a course of at least three hours of instruction in electronic notarial acts.
- Establishes a registration process for e-notaries with the Secretary of State's Office.
- Sets fees, including a maximum fee that an e-notary can charge of $10 per signature.

- Sets requirements for electronic document components, e-notary electronic signatures, and e-notary seals.
- Authorizes the Secretary of State to adopt rules to enforce minimal security requirements including ways to ensure the authenticity of electronic notarizations, requiring an electronic notary maintain a record of each electronic notarial act, and to provide that an electronic notary's failure to produce required records within 10 days of the Department's request will result in the suspension of the notary's power to act as a notary.
- Makes it a Class G felony to wrongfully manufacture or distribute hardware that permits a person to act as an e-notary without being commissioned and registered. Makes it a Class I felony to wrongfully obtain, conceal, damage, or destroy hardware, media, or software that enables an e-notary to affix an official e-signature.

The act appropriates $100,000 for each year of the 2005-2007 biennium for the administration of Article 2 of Chapter 10B (e-notary). It also authorizes the use of the Department of the Secretary of State's Information Technology staff and up to $200,000 from the Secretary of State's E-Commerce Transaction Fund to implement this act.

Section 11 requires registers of deeds and clerks of court to send copies of all pre-1991 Records of Notaries Public to the Secretary of State within 24 months of the effective date of the act for archiving. The Secretary of State bears the expenses of shipping or transferring.

Sections 1 and 2 (electronic recording), of this act became effective September 13, 2005. The remainder of this act becomes effective December 1, 2005, and applies to notarial acts, commissions, and recommissions made on or after that date. Criminal acts specifically created in Chapter 10B apply to offenses committed on or after December 1, 2005, without regard to whether a commission was issued under Chapter 10A or 10B. (SR)

Securities Transfer on Death

S.L. 2005-411 (SB 290) enacts the Uniform Transfer on Death Security Registration Act. The act allows the owner of securities to designate a beneficiary of the securities to be received upon the death of the owner. The owner may revoke or modify this designation at any time up until death. This designation does not convey any right or interest in the beneficiary until the time of death. Title to the securities would be transferred as a matter of contract not as a testamentary bequest, and as such would not be part of the probate estate. The act also provides that securities passing to a beneficiary under this law would be subject to claims of creditors of the decedent's estate if there were otherwise insufficient assets in the estate to satisfy all claims. The act would also not affect any estate tax obligations arising from the decedent's death.

This act became effective October 1, 2005, and applies to registration of securities in beneficiary form under this act made before, on, or after the effective date for decedents dying on or after that date. (WR)

Homeowner Association Amendments

S.L. 2005-422 (HB 1541) amends the North Carolina Planned Community Act and the North Carolina Condominium Act to provide for greater protections and participation by homeowners in the governance of their homeowner associations. The act makes the following changes to both Acts:

- Caps the charge for late payment of assessments in an amount not to exceed the greater of $20 per month or 10% of any assessment installment unpaid.
- Caps attorneys' fees at $1,200 in uncontested actions for the collection and the enforcement of a lien for dues or assessments.

- Reduces the maximum fine that may be imposed from $150 to $100 a day for violations of the declaration, bylaws, or rules or regulations of the association, for the period beginning 5 days after the decision finding a violation has been made.
- Prohibits attorneys' fees from being assessed and collected until the owner is given at least 15 days' prior notice that the association intends to seek attorneys' fees incurred in an enforcement action for the nonpayment of assessments or for violations of the declaration, bylaws, or rules and regulations of the association. Notice to the owners may be by first class mail to the property's address and, if different, to the mailing address for the lot owner in the association's records. The owner is allowed 15 days from the date of the mailing to pay the outstanding balance without accruing liability for the attorneys' fees and court costs.
- Limits foreclosure to judicial sale when the debt securing a lien consists solely of fines or service, collection, consulting, or administration fees imposed by the association. Foreclosure in the same manner as a foreclosure on a deed of trust is still permitted for foreclosure on a lien for past due assessments.
- Prohibits an association from charging a service, collection, consulting or administration fee from the owner unless expressly allowed in the declaration.
- Prohibits payments to any officer or member of an association's board unless the payments are expressly provided by the bylaws or are made for services and expenses on behalf of the association that are approved in advance by the executive board.
- Requires executive boards to provide owners an opportunity to attend and speak at meetings.
- Requires associations to maintain detailed records and to provide access to these records by owners, including furnishing of an association income and expenses report to owners at least annually.
- Limits restrictions on the display of the United States flag, the North Carolina flag, and political signs unless the deed of conveyance clearly sets out these restrictions.

This act becomes effective January 1, 2006, and applies to violations occurring and proceedings commenced on or after that date and to fiscal years beginning on or after that date. (WR)

Clarify/Enhance Domestic Violence and Tenancy Laws

S.L. 2005-423 (SB 1029). See **Children and Families** and **Civil Law and Procedure**.

Modernize City/County Planning

S.L. 2005-426 (SB 814). See **Local Government**.

2005 Military Support Act – Terminate Rental Agreements Early for Deployed Military

S.L. 2005-445, Part IV (SB 1117, Part IV) amends the current law permitting the early termination of a residential rental agreement by members of the United States Armed Forces under certain circumstances by permitting early termination when a member of the United States Armed Forces is deployed with a military unit for a period of not less than 90 days. The notice of termination must be given to the landlord in writing and must be accompanied by a copy of the official orders or a written verification from the commanding officer. Upon receipt of this notice, the lease will terminate on the earlier of 30 days after the next date rent is due or 45 days after receipt of the notice.

This part became effective September 28, 2005, and applies to rental agreements entered into or renewed on or after that date.

Parts I and II of this act make findings and appropriations for support of military operations and expedites licensing of military spouses. For more information on these sections see **Military, Veterans', and Indian Affairs** and **Occupational Boards and Licensing.**

Part III authorizes community colleges to support military training projects for the United States Armed Forces. Parts V through VIII authorize various programs to improve educational services to current and retired military personnel, and military personnel spouses and children. For additional information on these sections see **Education.** (WR)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 19
Resolutions

Joint Resolutions

Adjourn 2004 Extra Session

Res. 2004-14 Extra Session (HJR 2).

Greensboro Sit-In Anniversary

Res. 2005-1 (HJR 26).

Honor Founders/Town of Franklin 150th Anniversary

Res. 2005-2 (SJR 81).

Honor Hubert Humphrey/Former General Assembly Member

Res. 2005-3 (SJR 84).

Honor Don Goins

Res. 2005-4 (HJR 19).

Honor Town of Creedmoor/100th Anniversary

Res. 2005-5 (HJR 47).

State of The State Address/Inviting Governor

Res. 2005-6 (SJR 71).

Town of Salemburg 100th Anniversary

Res. 2005-7 (SJR 180).

General Assembly To Meet In Bath

Res. 2005-8 (SJR 182).

Honor Fred Alexander

Res. 2005-9 (SJR 205).

Honor Rotary Club's 100th Anniversary

Res. 2005-10 (HJR 100).

Honor Dr. Carter G. Woodson/Black History Month

Res. 2005-11 (HJR 361).

NASCAR Hall of Fame

Res. 2005-12 (HJR 375).

Honor Harold Kennedy

Res. 2005-13 (HJR 213).

Town of Coats 100th Anniversary

Res. 2005-14 (HJR 398).

Honor Founders of CIAA

Res. 2005-15 (HJR 453).

Bath's Tricentennial

Res. 2005-16 (HJR 497).

Women's History Month

Res. 2005-17 (HJR 627).

Confirm Howard Lee to Utilities Commission

Res. 2005-18 (SJR 426).

Honor Ashley Futrell

Res. 2005-19 (HJR 520).

Joint Session/Honor Veterans/Invite Governor

Res. 2005-20 (SJR 1166).

Honoring Charlie Poole, Musician

Res. 2005-21 (SJR 161).

Honoring Veterans

Res. 2005-22 (SJR 1167).

Honor UNC Tar Heels/Joint Session

Res. 2005-23 (SJR 1169).

Honor June Campbell

Res. 2005-24 (HJR 1118).

Honor Jim Graham

Res. 2005-25 (HJR 1113).

Honor Garner's 100th Anniversary

Res. 2005-26 (HJR 930).

Hudson's 100th Anniversary

Res. 2005-27 (HJR 989).

NASCAR Joint Session

Res. 2005-28 (HJR 1604).

NASCAR All-Star Challenge

Res. 2005-29 (HJR 1605).

Honor Red Gibson

Res. 2005-30 (SJR 1173).

Honor Jackie Torrence

Res. 2005-31 (HJR 744).

Honor Town of Newton

Res. 2005-32 (HJR 852).

Dismal Swamp Canal 200th Anniversary

Res. 2005-33 (HJR 774).

UNC-Chapel Hill Men's Basketball Team

Res. 2005-34 (SJR 1170).

Honor William Hiatt

Res. 2005-35 (HJR 1609).

Honor Clarence Gaines

Res. 2005-36 (HJR 1579).

Honor Reverend Sherley W. Edwards

Res. 2005-37 (HJR 578).

Confirm Robert K. Koger/Utilities Commission

Res. 2005-38 (HJR 1582).

Utilities Commission Appointment

Res. 2005-39 (SJR 1172).

Honor Fitch Family

Res. 2005-40 (HJR 198).

Honor Founders/Sigma Gamma Rho Sorority

Res. 2005-41 (SJR 305).

Honoring Tabor City/100th Anniversary

Res. 2005-42 (SJR 1164).

Honor Frank Howe McDuffie, Sr.

Res. 2005-43 (SJR 1178).

Honor Carolyn and Dorothy McNairy

Res. 2005-44 (HJR 933).

Honor Jim Lambeth

Res. 2005-45 (HJR 1789).

Warsaw 150th Anniversary

Res. 2005-46 (HJR 841).

Honor John W. Jones

Res. 2005-47 (HJR 197).

Honor Robert Monroe Davis, Sr.

Res. 2005-48 (SJR 1179).

Haywood Community College 40th Anniversary

Res. 2005-49 (HJR 1650).

Honor John Hall

Res. 2005-50 (HJR 1615).

Joint Session/Contested Election for Superintendent of Public Instruction

Res. 2005-51 (SJR 1180).

Set Joint Session to Confirm Governor's State Board of Education Appointments

Res. 2005-52 (HJR 1795).

Honor Barbara Phillips

Res. 2005-53 (HJR 1793).

Joint Resolution Confirming State Board of Education Appointments

Res. 2005-54 (HJR 1796).

State Board of Community Colleges Election

Res. 2005-55 (HJR 1799).

Town of Roxboro 150th Anniversary

Res. 2005-56 (HJR 1797).

Honor William Thomas

Res. 2005-57 (SJR 1171).

Adjournment

Res. 2005-58 (SJR 1184).

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 20
Retirement

Karen Cochrane-Brown (KCB) and Theresa Matula (TM)

Enacted Legislation

Retirement Systems Technical Corrections

S.L. 2005-91 (HB 710) makes technical corrections to the law governing the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, and the Firemen's and Rescue Squad Workers' Pension Fund. The amendments to the State and Local Systems' laws relate to:

- Counting a member's sick leave in computing creditable service by clarifying that a member must have at least one hour of sick leave to receive credit.
- Allowing a member who elected Option 2 or 3, (payment options designed under the statute) and who remarries after the death of a spouse, to request an estimate of the cost of designating the new spouse within 90 days but requiring that the designation be made within 120 days.
- Directing that in the event of the death of a primary beneficiary who has elected to receive the Survivors Alternate Benefit, any excess accumulated contributions must be paid to the member's contingent beneficiary, and if that person is no longer living at the time of payment, the benefit must be paid to the primary beneficiary's estate.
- Providing that if a member fails to respond within 90 days after a preliminary option estimate has been mailed to the member, the member's retirement application will be voided and the Retirement System will not be liable for any benefits that might have been due if the member had responded with regard to the option election.

The amendments to the Judicial Retirement System's law relate to:

- Providing that a retiree's excess accumulated contributions will be paid to a member's designated beneficiary regardless of whether the member elected an optional mode of payment when the member retired.
- Clarifying that the excess accumulated contributions remaining at the death of a designated survivor of a former member are payable to the member's designated beneficiary.

The amendments to the Firemen's and Rescue Squad Workers' Fund relate to:

- Repealing a provision that required the termination of membership of any member who became six months delinquent in making the required monthly payments.
- Clarifying that a fireman or rescue squad worker may terminate membership at any time and request a refund of the payments made; however, a member's delinquency in making the payments will not result in termination of the membership.

The act also amends the Disability Income Plan to clarify that a member is eligible for benefits if the member has five years of service within 96 calendar months prior to becoming disabled or upon cessation of continuous salary continuation payments. This provision became effective December 1, 2004.

The remainder of this act became effective July 1, 2005.

See also **Enacted Legislation** this chapter for Fire Service District Tax Rate - Firemen's and Rescue Squad Workers' Pension Membership. (KCB)

Extend the Sunset on Retired Teachers Returning to the Classroom

S.L. 2005-144, Part VII-A (HB 1630, Part VII-A) extends the sunset, from June 30, 2005, to June 30, 2007, on the provisions that allow retired teachers to return to the classroom with no earnings restrictions.

This part became effective June 30, 2005. (TM)

Provide Cost-of-Living Increases for Retirees of the Teachers' and State Employees' Retirement System, the Judicial Retirement System, the Local Retirement System, and the Legislative Retirement System

S.L. 2005-276, Sec. 29.25 (SB 622, Sec. 29.25) provides a 2% increase to beneficiaries of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, and the Legislative Retirement System. This section also provides a 2.5% increase to retired beneficiaries of the Local Governmental Employees' Retirement System.

This section became effective July 1, 2005. (KCB)

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

S.L. 2005-276, Sec. 29.26 (SB 622, Sec. 29.26) increases the pension paid to a retired member of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund from $161 to $163 per month. Additionally, this section makes a conforming change to increase, from $161 to $163, the monthly benefit paid to a member who becomes totally and permanently disabled in the line of duty.

This section became effective July 1, 2005. (TM)

Increase the Maximum Monthly Pension Benefits for Retired Members of the North Carolina National Guard

S.L. 2005-276, Sec. 29.27 (SB 622, Sec. 29.27) increases the monthly benefit from $50 to $75 for qualifying National Guard members with 20 years of creditable military service with an additional $7.50 per month (previously $5) for each additional year of service. The provision also increases the maximum total pension from $100 to $150 per month.

This section became effective July 1, 2005. (TM)

Conform Retiree Return to Teaching Benefit to IRS Guidelines/Clarify Definition of Retirement

S.L. 2005-276, Sec. 29.28 (SB 622, Sec. 29.28), as amended by S.L. 2005-345, Sec. 43 (HB 320, Sec. 43), makes several changes within the Teachers' and State Employees' Retirement System affecting retirees who return to work.

Retired Beneficiaries Returning to Work to Teach. – Previously, in the six months immediately following retirement, retired teachers could be employed as substitute teachers, or part-time tutors with a local board of education or charter schools. The section amends the law to specify that retired teachers cannot be employed in any capacity for at least six months

immediately preceding the effective date of reemployment. A conforming change is made to the section of the law that pertains to the postretirement earnings cap exemption, to specify that beneficiaries that are reemployed to teach must be retired at least six months and may not have been employed in any capacity with a public school for at least six months immediately preceding the effective date of reemployment. Additionally, in order to be exempt from the postretirement earnings cap, the beneficiary must be employed to teach in a permanent full-time or part-time capacity that exceeds 50% of the applicable workweek in a public school.

Reemployed Teacher Contribution Rate. – Each local school administrative unit is required to pay to the Teachers' and State Employees' Retirement System, a Reemployed Teacher Contribution Rate of 11.70% of covered salaries paid to retired teachers who are exempt from the earnings cap. The amount of salary plus Reemployed Teacher Contribution Rate that exceeds the State-supported salary level for that position must be paid from local funds.

Retired Beneficiaries Employed in Charter Schools. – The section extends, from June 30, 2005, to June 30, 2007, the expiration date of S.L. 2004-199, Sec. 57 (SB 1225, Sec. 57) that allows beneficiaries to be exempt from the postretirement earnings cap while reemployed in a charter school.

Change in Retirement Definition. – The section also changes the definition of "Retirement" in the Teachers' and State Employees' Retirement System. Retirement means the termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. The new definition further specifies that a retirement allowance may only be granted upon retirement of a member and that in order for a member's retirement to become effective in any month, the member must render no service, including part-time, temporary, substitute, or contractor service at any time during the six months immediately following the effective date of retirement.

The provisions under the above heading, "Beneficiaries Returning to Work to Teach," became effective August 1, 2005. The changes under the heading, "Change in Retirement Definition," became effective November 1, 2005, but do not apply to participants in The University of North Carolina Phased Retirement Program until June 30, 2007. The remaining provisions contained in this section became effective June 30, 2005. (TM)

Increase Benefit/Sheriffs' Supplemental Pension Fund

S.L. 2005-276, Sec. 29.30 (SB 622, Sec. 29.30) increases the maximum monthly pension, from $1,200 to $1,500, paid to an eligible retired sheriff under the Sheriffs' Supplemental Pension Fund. The section also increases to $1.25 (previously $0.75), the amount of money from the assessed costs of criminal actions that is remitted to the Department of Justice for the supplemental pension benefits of sheriffs.

This portion of the section that increases the money assessed from criminal actions became effective September 1, 2005 and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility, in which the citation or other criminal process was issued before that date, the cost will be the lesser of those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. The remainder of the section became effective September 1, 2005. (TM)

Utilities Commission Members in Consolidated Judicial Retirement System/ Transfer of Contributions to Consolidated Judicial Retirement System/ Retirement Allowance Limitation for Members of the Legislative Retirement System

S.L. 2005-276, Sec. 29.30A (SB 622, Sec. 29.30A) as amended by S.L. 2005-345, Sec. 42 (HB 320, Sec. 42) makes the following changes:

Utilities Commission Members in Judicial System. – S.L. 2005-276, Sec. 29.30A(a) through (h) makes all members of the Utilities Commission who are serving on or after September 1, 2005, members of the Consolidated Judicial System, rather than the Teachers' and State Employees' Retirement System. This section would have become effective September 1, 2005. However, S.L. 2005-345, Sec. 42 repealed this provision effective July 1, 2005.

Transfer of Contributions to Judicial System. – Allows a retired member of the Teachers' and State Employees' Retirement System whose retirement allowance ceases when the member becomes reemployed in a position covered by the Consolidated Judicial System to transfer the accumulated contributions and creditable service to the Judicial System on the same basis as members of other retirement systems. The member must earn at least five years of membership service in the Judicial System and must complete at least three years of membership service after the member's reemployment.

Retirement Allowance Limitation for Members of the Legislative System. – Prohibits a member of the Legislative Retirement System from receiving a retirement allowance while the member is employed in a position as a contributing member of the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. If the member becomes a member of either of these systems, the member's retirement allowance must be suspended until the member withdraws from membership in that system. This section became effective September 1, 2005, and applies only to members retiring on or after that date.

Except as otherwise provided, this section became effective September 1, 2005. (KCB)

Change Disability Plan Amendment Effective Date

S.L. 2005-276, Sec. 29.30B (SB 622, Sec. 29.30B). See **Labor and Employment.**

Death Benefits Act Definition – Law Enforcement Officer, Fireman, Rescue Squad Worker, Senior Civil Air Patrol Member

S.L. 2005-276, Sec. 29.30C (SB 622, Sec. 29.30C) provides that when a law enforcement officer, fireman, rescue squad worker, or senior Civil Air Patrol member dies as the result of a myocardial infarction suffered while on duty, or within 24 hours after participating in a training exercise or responding to an emergency situation, then the individual is presumed to have been killed in the line of duty and is eligible for benefits as provided for in the Law-Enforcement Officers', Firemen's Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

This section became effective July 1, 2005. (TM)

Fire Service District Tax Rate - Firemen's and Rescue Squad Workers' Pension Membership

S.L. 2005-281, Secs. 1.1-1.3 (SB 32, Secs. 1.1-1.3) repeal the law that forfeits membership in the North Carolina Firemen's and Rescue Squad Workers' Pension Fund when a member is delinquent in making payments to the Fund. These sections allow a member to terminate membership in the Fund at any time and request a refund of prior payments. It further specifies that a member's delinquency in making payments does not result in the termination of membership.

These sections became effective August 18, 2005.

See **Finance** for a summary of Section 1 of this act, which pertains to fire protection tax districts.

See also **Enacted Legislation** this chapter for a summary of Retirement Systems Technical Corrections, which enacted the same language as the sections above. (TM)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 21
Senior Citizens

Shawn Parker (SP) and Theresa Matula (TM)

Enacted Legislation

Criminal Records Checks/Long Term Care Changes

S.L. 2005-4 (SB 41) modifies the existing law requiring criminal history background checks for employees of long-term care facilities to clarify that the Department of Health and Human Services will only indicate to an employer whether the criminal history record has information that might affect the applicant's employability under the law. Specific results of the national criminal history record check will not be shared with the employer.

The act also modifies the definition of "area authority" to make conforming changes with mental health and Department of Justice statutes since area authorities have assumed administrative roles and are no longer service providers.

This act became effective March 23, 2005. (SP)

Adult Protective Services Task Force/Collaborate

S.L. 2005-23 (HB 45) directs the Department of Health and Human Services, Adult Protective Services Task Force, to collaborate with stakeholders and other persons interested in improving adult protective services and to report findings and recommendations to the North Carolina Study Commission on Aging, and the Legislative Study Commission on State Guardianship Laws, on or before April 1, 2006.

This act became effective April 28, 2005. (TM)

License Assisted Living Facilities/Elderly

S.L. 2005-66 (SB 572) deletes the assisted living residence category, "homes for developmentally disabled adults," as these homes are now licensed under Chapter 122C, and creates a new category, "adult care homes that serve only elderly persons." This change permits homes to be licensed to serve only this category of client. For purposes of this category, "elderly person" is defined as:

- Any person age 55 or older who requires assistance with activities of daily living, housing, and services.
- Any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia that requires assistance with activities of daily living, housing, and services.

The Medical Care Commission is directed to adopt rules to implement the act.

This act became effective May 26, 2005. (TM)

Clerks May Order Mediation

S.L. 2005-67 (HB 1015). See **Courts, Justice, and Corrections**.

Jury Exemptions/72 and Older

S.L. 2005-149 (SB 321). See **Courts, Justice, and Corrections**.

Exploitation/Elderly or Disabled Adult

S.L. 2005-272 (HB 1466). See **Criminal Law and Procedure**.

Senior Prescription Drug Access Program Funding

S.L. 2005-276, Sec. 10.3 (SB 622, Sec. 10.3) provides that if there is a shortfall of funds from the Health and Wellness Trust Fund, the Director of the Budget may use up to $1.5 million in the 2005-2006 fiscal year to fully fund the Senior Prescription Drug Access Program through December 31, 2005.

This section became effective July 1, 2005. (TM)

Senior Cares Program Administration/Automatic Enrollment Medicare Prescription Drug Program

S.L. 2005-276, Sec. 10.4 (SB 622, Sec. 10.4) authorizes the Department of Health and Human Services (Department) to administer the "Senior Cares" prescription drug access program, approved by the Health and Wellness Trust Fund Commission and funded by the Health and Wellness Trust Fund, until the program expires December 31, 2005. The Department is authorized to conduct activities after December 31, 2005, that are related to closing the program and paying claims incurred before, but received after, December 31, 2005.

This provision also authorizes the Department to automatically enroll in the Medicare Part D Prescription Drug Program, current and future participants in the Senior Cares prescription drug assistance program whose income is not more than 135% of the federal poverty level. However, prior to automatic enrollment, the Department must give the individual the opportunity to decline automatic enrollment.

This section became effective July 1, 2005. (TM)

County Medicaid Cost Share – Adult Care Homes

S.L. 2005-276, Sec. 10.13(b) (SB 622, Sec. 10.13(b)) continues the statutory requirement that the county share of the cost of Medicaid Personal Care Services paid to adult care homes must be decreased incrementally each fiscal year until the county share reaches 15% of the nonfederal share.

This section became effective July 1, 2005. (SP)

Expand Community Care of North Carolina Management to Additional Medicaid Recipients

S.L. 2005-276, Sec. 10.17 (SB 622, Sec. 10.17). See **Health and Human Services**.

Medicaid Personal Care Services Limitations

S.L. 2005-276, Sec. 10.19(a) (SB 622, Sec. 10.19(a)) requires the Department of Health and Human Services, Division of Medical Assistance (Division), to reduce the cost of providing personal care services under the Medicaid program by $13,711,542 for the 2005-2006 fiscal year

and $16,115,389 for the 2006-07 fiscal year. The reduction must be accomplished through the implementation of a utilization management system for Personal Care Services and Personal Care Services Plus. This system may include reducing personal care services to 50 hours or otherwise managing personal care services. The Division is required to work with Community Care of North Carolina (CCNC) to determine how CCNC can help with the review of the need for and utilization of personal care services.

This section became effective July 1, 2005.

See also **Studies**, Referrals to Departments, Agencies, Etc. subheading in this chapter for Study Additional Utilization/Prior Authorization Systems for Personal Care Services and Other Home-and Community-Based Services. (TM)

Verification of State Residency for Medical Assistance

S.L. 2005-276, Sec. 10.21A (SB 622, Sec. 10.21A). See **Health and Human Services**.

Medicaid Estate Recovery to Include Liens on Real Property

S.L. 2005-276, Sec. 10.21C (SB 622, Sec. 10.21C), as amended by S.L. 2005-345, Sec. 16 (HB 320, Sec. 16) provides that to the extent allowed by section 1396(p) of Title XIX of the Social Security Act, the Department of Health and Human Services (Department) may impose liens against real property, including the home, of a recipient of medical assistance. To the extent that allowable Medicaid claims are not satisfied as a result of the execution of any liens held by the Department, the Department is a fifth-class creditor. The act specifies that the recipient of medical care services paid for by the North Carolina Medicaid Program may be:

- Any age and receiving medical care services as an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and cannot reasonably be expected to be discharged to return home; or
- 55 years of age or older and receiving nursing facility services, home and community-based services, hospital care and prescription drugs related to nursing facility services or home and community-based services, personal care services, Medicare premiums, private duty nursing, home health aide services, home health therapy, and/or speech pathology services.

A "home" is defined as property, consisting of the recipient's dwelling and the land used and operated in connection with the dwelling, in which a recipient has, or had immediately before or at the time of the recipient's death, an ownership interest or legal title.

This provision adds new sections to the law to:

- Allow the Department to postpone or waive its claim, including execution of a lien, when enforcement would work an undue hardship to an heir or beneficiary of the Medicaid recipient.
- Establish the criteria for an undue hardship.
- Require that a claim of undue hardship to an heir or beneficiary be made in writing to the Department within 30 days after the receipt of notification of the Medicaid lien or claim.
- Outline when estate recovery is not cost effective.
- Provide for notice of estate recovery.
- Require the county department of social services administering medical assistance to gather and provide the Department with the information and administrative or legal assistance needed to recover medical assistance and provide that the county will be paid an amount equal to 20% of the nonfederal share of recovery collected.

This section becomes effective July 1, 2006, and applies to recipients of medical assistance on or after that date. This act became effective July 1, 2005. (TM)

Long-Term Plan for Meeting Mental Health Developmental Disabilities, and Substance Abuse Services Needs

S.L. 2005-276, Sec. 10.24 (SB 622, Sec. 10.24). See **Health and Human Services**.

Transition Planning for State Psychiatric Hospitals

S.L. 2005-276, Sec. 10.28 (SB 622, Sec. 10.28). See **Health and Human Services**.

Mental Retardation Center Downsizing

S.L. 2005-276, Sec. 10.29 (SB 622, Sec. 10.29). See **Health and Human Services**.

Senior Center Outreach

S.L. 2005-276, Sec. 10.37 (SB 622, Sec. 10.37) requires that of the funds appropriated to the Department of Health and Human Services, Division of Aging and Adult Services (Division), for the 2005-2007 fiscal biennium, the Division must enhance senior center programs as follows:

- To expand the outreach capacity of senior centers to reach unserved or underserved areas.
- To provide start-up funds for new senior centers.

However, prior to funds being allocated pursuant to this section for start-up funds for a new senior center, the county commissioners of the county in which the new center will be located must:

- Formally endorse the need for such a center.
- Formally agree on the sponsoring agency for the center.
- Make a formal commitment to use local funds to support the ongoing operation of the center.

Additionally, this section requires that funds be allocated by October 1 of each fiscal year and prevents State funding from exceeding 75% of reimbursable costs.

This section became effective July 1, 2005. (TM)

State-County Special Assistance

S.L. 2005-276, Sec. 10.38 (SB 622, Sec. 10.38) provides that effective October 1, 2005, the maximum monthly rate for residents in adult care home facilities is $1,118 per month per resident, unless adjusted by the Department of Health and Human Services (Department). The maximum monthly rate for residents in Alzheimer/Dementia special care units is $1,515 per month per resident unless adjusted by the Department.

This section became effective July 1, 2005. (TM)

Special Assistance In-Home

S.L. 2005-276, Sec. 10.39(a) (SB 622, Sec. 10.39(a)), as amended by S.L. 2005-345, Sec. 18 (HB 320, Sec. 18), allows the Department of Health and Human Services (Department) to use funds from the existing State-County Special Assistance for Adults budget to provide Special Assistance payments to eligible individuals with in-home living arrangements. The provision includes the following:

- Allows payments to be made for up to 1,000 individuals during the 2005-2006 fiscal year and the 2006-2007 fiscal year.

- Provides that the standard monthly payment to individuals enrolled in the Special Assistance in-home program must be 75% of the monthly payment the individual would receive if the individual resided in an adult care home and qualified for Special Assistance, except if a lesser payment amount is appropriate for the individual as determined by the local case manager.
- Specifies that for State fiscal year 2005-2006, qualified individuals are not allowed to receive payments at rates less than they would have been eligible to receive in State fiscal year 2004-2005.
- Requires the Department to implement Special Assistance in-home eligibility policies and procedures to assure that in-home program participants are those individuals who need and, but for the in-home program, would seek placement in an adult care home facility.
- Requires the Department's policies and procedures to include the use of a functional assessment.
- Requires the Department to make the in-home option available to all counties on a voluntary basis.
- Requires that to the maximum extent possible, the Department must consider geographic balance in the dispersion of payments to individuals across the State.

This subsection became effective October 1, 2005. This act became effective July 1, 2005.

See also **Studies**, Referrals to Departments, Agencies, Etc. subheading in this chapter for Special Assistance In-Home Report. (TM)

Regulatory Changes To Improve Quality and Safety In Home Care Services, Mental Health Facilities, Adult Care Homes, and Certain Hospital Facilities

S.L. 2005-276, Sec. 10.40A(a-b) and (i-p)) (SB 622, Sec. 10.40A(a-b) and (i-p)) makes a number of changes affecting in-home care services and health care facilities.

Home Care Rules and Inspection. – The North Carolina Medical Care Commission may adopt, amend, and repeal all rules necessary for the implementation of the Home Care Agency Licensure Act and the Home Care Clients' Bill of Rights. Rules authorized include those that:

- Recognize the different types of home care services and specific requirements of the provision of each type of home care service.
- Establish staff qualifications, including professional requirements for home care agency staff. The rules may require that one or more staff of an agency be licensed or certified, may establish minimum training and education qualifications for staff, and include the recognition of professional certification boards for professions not licensed under law provided that the professional board evaluates applicants on a basis that protects the public health, safety, or welfare.
- Define geographic service areas for in-home aide services and staffing qualifications for licensed home care agencies for the purpose of ensuring effective supervision of in-home aide staff and the timely provision of services. (A "geographic service area" is the geographic area in which a licensed agency provides home care services).
- Prohibit licensed home care agencies from hiring individuals listed on the Health Care Personnel Registry.
- Require applicants for home care licensure to receive training in the requirements for licensure, the licensure process, and the rules pertaining to the operation of a home care agency.

Changes also include a requirement for the Department of Health and Human Services (Department) to inspect each home care agency at least every three years and a requirement

that agencies provide each client with a written notice of the Division of Facility Services hotline number in advance of furnishing care to the client or during the initial evaluation visit before the initiation of services.

Home Care Clients' Bill of Rights. – The Home Care Clients' Bill of Rights is established and includes: legislative intent, declaration of clients' rights, notice to client, implementation, enforcement and investigation, and confidentiality.

- *Declaration of Home Care Clients' Rights.* – Each home care agency client has the following rights:
  - To be informed and participate in his or her plan of care.
  - To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.
  - To receive care and services that are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.
  - To voice grievances about care and not be subjected to discrimination or reprisal for doing so.
  - To have his or her personal and medical records kept confidential and not be disclosed without appropriate written consent.
  - To be free of mental and physical abuse, neglect, and exploitation.
  - To receive a written statement of services provided by the agency and the charges the client is liable for paying.
  - To be informed of the process for acceptance and continuance of service and eligibility determination.
  - To accept or refuse services.
  - To be informed of the agency's on call service.
  - To be informed of supervisory accessibility and availability.
  - To be advised of the agency's procedures for discharge.
  - To receive a reasonable response to his or her requests of the agency.
  - To be notified within 10 days when the agency's license has been revoked, suspended, canceled, annulled, withdrawn, recalled, or amended.
  - To be advised of the agency's policies regarding patient responsibilities.
- *Notice to Client.* – During the initial evaluation visit or before furnishing services, an agency must provide each client with:
  - A copy of the declaration of home care clients' rights.
  - A copy of the agency's policies regarding client responsibilities as it relates to safety and care plan compliance.
  - The address and telephone number for information, questions, or complaints about services provided by the agency.
  - The address and telephone number of the section of the Department of Health and Human Services responsible for the enforcement of the provisions of this Part.
- *Enforcement and Investigation.* – The Department of Health and Human Services is responsible for enforcement of the home care provisions and must investigate complaints within a reasonable period of time, not to exceed 60 days.

  When the Department receives a complaint pertaining to client care or safety, an investigation must be initiated:
  - Immediately upon receipt of the complaint if the complaint alleges a life threatening situation.
  - Within 24 hours if the complaint alleges abuse of a client as defined by law.
  - Within 48 hours if the complaint alleges neglect of a client as defined by law.
  - Within two weeks in all other situations.

  Investigations by the Department must be completed within 30 days.

Within 72 hours, a home care agency must investigate complaints made to the agency by a home care client or the client's family and must document the existence of the complaint and the resolution.

- *Implementation, Confidentiality, and Rules.* – Home care agency directors are responsible for implementing changes and each agency must provide appropriate training. The Department must maintain the confidentiality of persons registering complaints and of medical records. The North Carolina Medical Care Commission must adopt rules defining the scope of permissible advertising and promotional practice by home care agencies.

Adult Care Home Licensure, Monitoring, and Inspection. – Amends the law concerning the licensing of facilities to include a requirement that the Department issue a license for a facility not currently licensed as an adult care home for a period of six months. The Department is required to issue a license for the balance of the calendar year if the licensee demonstrates substantial compliance with laws pertaining to licensing and to the Adult Care Home Residents' Bill of Rights, and with rules.

This section also deletes some requirements pertaining to the monitoring of adult care homes and replaces them with new requirements. New requirements include the following:

- *Monitoring and Inspection.* – The Department must ensure that adult care homes requiring a license are monitored for licensure compliance on a regular basis. The provision specifies that all licensed facilities, including adult care units in nursing homes, are subject to inspections at all times by the Secretary of the Department of Health and Human Services. The Division of Facility Services is required to inspect all adult care homes and adult care units in nursing homes on an annual basis, effective July 1, 2007 and thereafter. Further, the Department must ensure that adult care homes are inspected every two years to determine compliance with physical plant and life-safety requirements.
- *Routine Monitoring by County Departments of Social Services.* – The Department is required to work with county departments of social services for routine monitoring in adult care homes and to ensure compliance with State and federal laws, rules, and regulations. The Division of Facility Services will oversee the monitoring and perform any required follow-up inspection. The county departments of social services must document in a written report, all on-site visits, including monitoring visits, revisits, and complaint investigations, and must submit to the Division of Facility Services written reports of each facility visit within 20 working days of the visit.
- *Annual Reviews and Intervention with the County Departments of Social Services.* – The Division of Facility Services is required to conduct and document annual reviews of the county departments of social services' performance. The Department is allowed to intervene when monitoring is not done in a timely manner or when there is failure to identify or document noncompliance. Departmental intervention must include one or more of the following:
  - Sending staff of the Department to the county departments of social services to provide technical assistance and to monitor the services being provided by the facility.
  - Advising county personnel as to appropriate polices and procedures.
  - Establishing a plan of action to correct county performance.

  The Secretary of Health and Human Services determines when the Department must assume the county's regulatory responsibility for the county's adult care homes.
- *Training for Adult Home Specialists and Supervisors.* – County departments of social services' adult home specialists and their supervisors are required to complete the following:
  - 8 hours of prebasic training within 60 days of employment.
  - 32 hours of basic training within 6 months of employment.
  - 24 hours of postbasic training within 6 months of the basic training program.

- 8 hours (minimum) of complaint investigation training within 6 months of employment.
- 16 hours (minimum) of statewide training annually by the Division of Facility Services.

➢ *Monitoring of Air Circulation, Ventilation, and Room Temperature.* – The Department is required to regularly monitor the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules must include a requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit. (These requirements were deleted from a previous subsection in the law and simply recodified in a new location).

➢ *Administrator Directory.* – The Department is required to keep an up-to-date directory of all persons who are administrators. An "Administrator" is defined in the law as a person approved by the Department who has the responsibility for the total operation of a licensed domiciliary home. (This provision was deleted from a previous subsection in the law and simply recodified in a new location).

The section also contains a requirement that adult care homes conspicuously post the Division of Facility Services' complaint hotline number in a public place in the facility.

Adult Care Home Penalties. –

➢ *Penalty Changes.* – Penalties for violation of Residents' Rights, or State and federal laws and regulations are increased as follows:

- A civil penalty for each Type A Violation in a home with 6 (previously 9) or fewer beds must be imposed for not less than $500 (previously $250) nor more than $10,000 (previously $5,000). The Department must impose a civil penalty in an amount not less than $1,000 (previously $500) nor more than $20,000 (previously $10,000) for each Type A Violation in facilities licensed for 7 (previously 10) or more beds.
- A plan of correction for a Type B Violation cannot exceed requirements imposed by existing rule or law.
- Where a facility has failed to correct a Type A Violation, the Department must assess the facility a civil penalty in the amount of up to $1,000 (previously $500) for each day that the deficiency continues beyond the time specified in the plan of correction.
- Where a facility has failed to correct a Type B Violation within the time specified for correction, the Department must assess the facility a civil penalty in the amount of up to $400 (previously $200) for each day that the deficiency continues beyond the date specified for correction.
- The Department is required to impose a civil penalty on any applicant for licensure that provides false information or omits information on the portion of the licensure application requesting information on owners, administrators, principals, or affiliates of the facility. The amount of the penalty must be as prescribed for a Type A Violation.

➢ *Penalty Review Committee Changes.* – The penalty review committee, established by law to review administrative penalties, is required to meet at least semiannually. The committee will provide a forum for residents, guardians or families of residents, local departments of social services, and providers, will make recommendations to the Department on changes in policy, training, or rules as a result of its review and publish a report. One member of the Department outside the Division of Facility Services, and one member not affiliated with the Department will cochair the committee. The Secretary of the Department of Health and Human Services administers the work of the committee and provides meeting notice to the following:

- The licensed provider.
- The local department of social services that is responsible for oversight of the facility involved.
- The residents affected.
- The families or guardians of the residents affected.

The Department is required to notify families or guardians of affected residents of the right to request a penalty review committee review of the Department's penalty decision before the decision becomes final. Within 60 days of receipt of a request from a family member or guardian for review of the Department's penalty decision, the penalty review committee must meet to conduct the review and must inform the family member or guardian of the results of the review.

Quality Improvement Consultation Program for Adult Care Homes. – The Department's Division of Aging and Adult Services (Division) is required to develop a Quality Improvement Consultation Program for Adult Care Homes (Program). During development of the Program, the Division must consult with adult care home providers, county departments of social services, consumer advocates, and other interested stakeholders. The purpose of the Program is to promote better care and improve quality of life in a safe environment for residents in adult care homes through consultation and assistance with adult care home providers. County departments of social services are responsible for implementation of the Program with all adult care homes located in the respective county.

The Department must submit a progress report addressing the following topics:

- Principles and philosophies that are resident-centered and promote independence, dignity, and choice for residents.
- Approaches to develop continuous quality improvement with a focus on resident satisfaction and optimal outcomes.
- Dissemination of best practice models that have been used successfully elsewhere.
- A determination of the availability of standardized instruments, and their use to the extent possible, to assess and measure adult care home performance according to quality of life indicators.
- Utilization of quality improvement plans, that include agreed upon time frames for completion of improvements and identification of needed resources for adult care homes, and that identify and resolve issues that adversely affect quality of care and services to residents.
- Training required to equip county departments of social services' staff to implement the Program.
- A distinction of roles between the regulatory role of the Department's Division of Facility Services and the quality improvement consultation and monitoring responsibilities of the county departments of social services; and identification of staffing and other resources needed to implement the Program.

The Division must conduct a pilot of the Program. No more than four county departments of social services can participate in the pilot and geographic balance and size must be considered in carrying out the pilot. At the conclusion of the pilot, the Division must make recommendations regarding the effectiveness of the Program. If the Division recommends expansion of the pilot, the report must include the cost and a proposed timetable for implementing the recommendations, including identification of any statutory or administrative rule changes.

The progress report must be submitted on or before April 1, 2006, to the North Carolina Study Commission on Aging, to the Senate Appropriations Committee on Health and Human Services and the House of Representatives Subcommittee on Health and Human Services. The recommendations regarding expansion of the Program must be made to the Secretary of the Department of Health and Human Services, the North Carolina Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services.

The portion of the section that pertains to issuing a license for a period of six months to a facility not currently licensed as an adult care home, becomes effective July 1, 2007, except that the Division may conduct inspections more frequently than annually prior to July 1, 2007, as funds and personnel permit. The portion of the section that pertains to training required of the county departments of social services' adult care home specialists and their supervisors becomes effective July 1, 2006. Specialists and their supervisors employed on or before July 1, 2006, must complete the required training components or those portions of the training components they have not completed prior to the effective date within 12 months. The remainder of the section became effective August 13, 2005.

Section 10.40A(c-h) concerns changes for mental health facilities. For additional information, see **Health and Human Services**.

Section 10.40A(q) contains a study. For additional information, see **Studies**, Referrals to Departments, Agencies, Etc. subheading in this chapter. (TM)

Authorization for Health Care Facilities to Remain in Operation Under Certain Circumstances.

S.L. 2005-276, Sec. 10.40B (SB 622, Sec. 10.40B). See **Health and Human Services**.

Use of Medication Aides to Perform Technical Aspects of Medication Administration in Skilled Nursing Facilities

S.L. 2005-276, Sec. 10.40C (SB 622, Sec. 10.40C) amends the Nursing Home Licensure part of the Health Care Facility Licensure Act to allow the use of medication aides to perform technical aspects of medication administration for facilities licensed and medication administration services provided under this Part.

The North Carolina Medical Care Commission is required to adopt rules to include the following:

- Training and competency evaluation of medication aides.
- Requirements for listing under the Medication Aide Registry.
- Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel.

The Board of Nursing must:

- Establish standards for faculty requirements for medication aide training.
- Provide ongoing review and evaluation, and recommend changes, for faculty and medication aide training requirements to support safe medication administration and improve client, resident, and patient outcomes.

This section also requires the Department of Health and Human Services to establish a Medication Aide Registry containing the names of all health care personnel in North Carolina who have successfully completed a medication aide training program that has been approved by the North Carolina Board of Nursing and passed a State-administered medication aide competency exam. Employers are required to access the Medication Aide Registry prior to allowing an individual to serve as a medication aide and are not allowed to use an individual as a medication aide unless the individual is listed on the Medication Aide Registry. Employers must note each incidence of access in the appropriate business file. Employers must also access the Health Care Personnel Registry prior to employing a medication aide and any substantiated action listed against the medication aide will disqualify the medication aide from employment in a covered facility or agency.

The North Carolina Board of Nursing and the Department of Health and Human Services must report on implementation not later than March 1, 2006, and annually thereafter, 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 becomes effective July 1, 2006. (TM)

Department of Health and Human Services and Community Colleges Study Use of Medication Aides to Perform Technical Aspects of Medication Administration

S.L. 2005-276, Sec. 10.40D (SB 622, Sec. 10.40D). See **Education** and **Health and Human Services**.

Plan for Star-Rating System for Adult Care Homes

S.L. 2005-276, Sec. 10.41 (SB 622, Sec. 10.41) requires the Department of Health and Human Services to develop a plan for implementing a star-rating system for adult care homes and by not later than January 1, 2007, to report on the details and status of the plan to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2005. (SP)

Studies

Referrals to Departments, Agencies, Etc.

Study Additional Utilization/Prior Authorization Systems for Personal Care Services and Other Home and Community-Based Services

S.L. 2005-276, Sec. 10.19(b) (SB 622, Sec. 10.19(b)) requires the Department of Health and Human Services, Division of Medical Assistance, to study and determine additional utilization/prior authorization systems for personal care services and other home and community-based services that can be provided to individuals who meet medical criteria. These systems must be able to be implemented when the new Medicaid Management Information System goes into effect. The Division 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, on the plan for implementation, including costs, not later than May 1, 2006.

This section became effective July 1, 2005.

See also **Enacted Legislation** this chapter for Medicaid Personal Care Services Limitation. (TM)

Community Alternative Programs Reimbursement System

S.L. 2005-276, Sec. 10.20 (SB 622, Sec. 10.20) requires the Department of Health and Human Services, Division of Medical Assistance, to study developing a new system for reimbursing the Community Alternatives Program. The new system must:

- Use a case-mix reimbursement system, similar to the one used by nursing facilities and home health agencies, to determine the level of care provided and the amount paid for the care provided.

- Incorporate into the case-mix system the home environment and social support systems.
- Use the Resource Utilization Groups-III to determine the level of need for Community Alternatives Programs-Mentally Retarded/Developmentally Disabled program services except for CAP-MR/DD program services.

The Division must report not later than May 1, 2006, 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 development of the new system, including an implementation schedule. Full implementation of the new system must be not later than January 1, 2007.

This section became effective July 1, 2005. (TM)

Medicaid Study

S.L. 2005-276, Sec. 10.21E (SB 622, Sec. 10.21E) requires the Department of Health and Human Services (Department) to study Medicaid services for individuals who are dually eligible for Medicaid and Medicare. In particular, the study must include the Medicare Part D impact on these services, the financial impact on the State of Medicare clawback provisions, and efficiencies that can be realized in services for this dually eligible population. The study must also include the impact on the Medicaid program as a whole. The Department must report the results of the study to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than May 1, 2006.

This section became effective July 1, 2005. (TM)

Special Assistance In-Home

S.L. 2005-276, Sec. 10.39(b-c) (SB 622, Sec. 10.39(b-c)) requires the Department of Health and Human Services (Department) to report to the cochairs of the House of Representatives Appropriations Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, the cochairs of the Senate Appropriations Committee, and the cochairs of the Senate Appropriations Committee on Health and Human Services, on or before January 1, 2006, and on or before January 1, 2007. The report must include the following:

- A description of cost savings that result from allowing individuals eligible for State-County Special Assistance the option of remaining in the home.
- A complete fiscal analysis of the in-home option to include all federal, State, and local funds expended.
- The amount of case management that is needed and which types of individuals are most in need of case management.
- The geographic location of individuals receiving payments under this section.
- A description of the services purchased with these payments.
- A description of the income levels of individuals who receive payments under this section and the impact on the Medicaid program.
- Findings and recommendations as to the feasibility of continuing or expanding the in-home program.
- The level and quantity of services (including personal care services) provided to the demonstration project participants compared to the level and quantity of services for residents in adult care homes.

The Department must incorporate data collection tools designed to compare quality of life among institutionalized versus noninstitutionalized populations (i.e., an individual's perception

of his or her own health and well-being, years of healthy life, and activity limitations). The Department must utilize national standards to the extent they are available.

This section became effective July 1, 2005.

See also **Enacted Legislation** this chapter for Special Assistance In-Home. (TM)

Regulatory Changes To Improve Quality and Safety In Home Care Services, Mental Health Facilities, Adult Care Homes, and Certain Hospital Facilities

S.L. 2005-276, Sec. 10.40A(q)) (SB 622, Sec. 10.40A(q)) directs the Department of Health and Human Services (Department) to study whether there are additional "health care facilities" and "health care personnel" that are employed in health care settings, including unlicensed health care settings, that should be contained in the Health Care Personnel Registry and listed in G.S. 131E-256. The Department must report its findings and recommendations to the North Carolina Study Commission on Aging by December 1, 2005.

This section became effective July 1, 2005.

See also **Enacted Legislation** this chapter and the Health chapter for a summary of the remainder of this section. (TM)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 22
State Government

Erika Churchill (EC), Karen Cochrane-Brown (KCB), Kory Goldsmith (KG), Tim Hovis (TH), Hal Pell (HP), Theresa Matula, (TM), Giles S. Perry (GSP), Ben Popkin (BP), Walker Reagan (WR), and Barbara Riley (BR)

Enacted Legislation

Agencies and Departments

State Controller/Compliance Review/Public Records

S.L. 2005-65 (HB 231) clarifies that the State Controller has the authority to conduct compliance reviews of State agencies to determine whether the State's accounting system standards are being applied. The act also exempts all work papers and other supportive material from the public records laws, although reports resulting from the work would be public records.

This act became effective May 26, 2005. (HP)

Division of Forest Resources/Emergency Response

S.L. 2005-128 (HB 395). See **Environment and Natural Resources.**

Torts by State Law Enforcement

S.L. 2005-243 (SB 1118) authorizes any person who obtained a judgment against a member of the Highway Patrol in federal court, where the court determined that the member of the Patrol was acting within the course and scope of the officer's employment, to file an action within 180 days of the effective date of the act under the State Tort Claims Act. The action may be filed despite the fact that the statute of limitations has run. This right applies whether or not the defendant is still a State employee or member of the Highway Patrol or if the time period for bringing such an action has tolled. The maximum amount that may be recovered is the applicable tort claim limit at the time the tort occurred. The limit under the Tort Claims Act is currently $500,000.

This act became effective July 29, 2005. (TH)

Modern Escheat Investment Program

S.L. 2005-252 (SB 341) authorizes the State Treasurer to invest up to 20% of the assets of the Escheat Fund in the investment options authorized by G.S. 147-69.2(b)(7-9), which include: insurance contracts, group trusts, individual, common, or collective trust funds of banks and trust companies, real estate investment trusts, and limited liability partnerships and limited liability companies; preferred or common stocks invested directly or invested through individual, common, or collective trust funds of banks, trust companies, and group trust funds of advisory companies; and limited partnership interests or interests in a limited liability company if the primary purpose of the partnership or company is to invest in public or private debt, public or private equity, or corporate buyout transactions. Chapters 116B and 147 of the General Statutes specify the contents and investment options for the Escheat Fund and the North Carolina

Constitution requires property in the Fund to be used to "aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State."

This act became effective August 5, 2005. (TM)

Minority Business Certification

S.L. 2005-270 (SB 907) authorizes the Secretary of Administration to adopt rules and procedures for certifying historically underutilized businesses and to create and maintain a database of businesses so certified to be used in conjunction with awarding State contracts for goods and services and State public construction contracts. Section 3 of the act defines a historically underutilized business as a business that is at least 51% owned and operated by a person who is a member of one of the listed groups. The groups include blacks, Hispanics, Asian Americans, American Indians, females, persons with disabilities, and persons socially and economically disadvantaged.

This act became effective August 12, 2005. (WR)

Clarify Legislative Oversight of Agency Fees and Charges

S.L. 2005-276, Sec. 6.8 (SB 622, Sec. 6.8) allows State agencies to implement fee increases within the range of their statutory authorization without prior consultation with the Joint Legislative Committee on Governmental Operations if the Committee does not meet within 90 days after the text of the rule increasing the fee is published and the request for consultation is submitted to the Committee. The request for consultation must include the amount of the current fee or charge, the amount of the new or increased fee or charge, the statutory authorization for the fee or charge, and a detailed explanation of the need to establish or increase the fee or charge. Section 6.8(a) also provides that the requirements for prior consultation under G.S. 12-3.1 do not apply to the establishment or increase in fees or charges authorized or anticipated in S.L. 2005-276, the Current Operations and Capital Improvement Appropriations Act of 2005.

This section became effective July 1, 2005. Section 6.8(a) expires June 30, 2007. (WR)

Uniform Payroll System

S.L. 2005-276, Sec. 6.19 (SB 622, Sec. 6.19) directs the State Controller to prescribe, develop, and maintain a uniform payroll system for all State agencies. The State Controller may authorize a State agency to operate its own payroll system. State agencies that are authorized to operate a payroll system must do so in accordance with any requirements adopted by the State Controller.

This section became effective July 1, 2005.(HP)

Liability Insurance (Certain State Employees)

S.L. 2005-276, Sec. 10.7 (SB 622, Sec. 10.7) authorizes various State departments to provide liability insurance not to exceed $1 million per incident on behalf of certain State employees providing health care services. These employees include the following:

- Licensed medical and dental providers in the Department of Health and Human Services (DHHS), the Department of Environment and Natural Resources, and the Department of Correction.
- Licensed physicians who work as faculty with The University of North Carolina and work on contract for the Division of Mental Health, Developmental Disabilities and Substance Services of DHHS.

- Physicians in residency training programs from the University of North Carolina who are in training at institutions operated by the DHHS.

Coverage may include commercial insurance or self-insurance but will only be applicable for acts or omissions while the employee is engaged in providing medical or dental services pursuant to State employment or training.

Coverage is not provided for the following:

- Acts or omissions committed by an individual who knows or reasonably should have known that the act was a violation of applicable State or federal law.
- Sexual, fraudulent, criminal, or malicious acts.
- Willful or wanton negligence.

This section became effective July 1, 2005. (TH)

State Fleets Shall Develop and Implement Plans to Improve Use of Alternative Fuels, Synthetic Lubricants, and Efficient Vehicles

S.L. 2005-276, Sec. 19.5 (SB 622, Sec. 19.5) directs all State agencies, universities, and community colleges that have State-owned vehicle fleets to develop and implement plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The plans must achieve a 20% reduction or displacement of the current petroleum products consumed by January 1, 2010. Agencies must implement their plans by January 1, 2006. However, before implementation, all affected agencies must report their plans to the Department of Administration, which must compile a report on the plans and submit it to the Joint Legislative Commission on Governmental Operations. For purposes of this provision, a State-owned vehicle fleet consists of more than 10 vehicles that are designed for highway use and titled to one of the agencies. Specialty vehicles that are used for educational purposes, and exempt vehicles are subject to 10% reductions. The agencies must report to the Department of Administration on the efforts undertaken to achieve the reductions by September 1, 2006, and annually thereafter on September 1. The Department of Administration must compile and forward a report on the agencies' progress to the Joint Legislative Commission on Governmental Operations by November 1, 2006, and annually thereafter on November 1.

This section became effective July 1, 2005. (KCB)

Housing Finance Agency Shall Continue and Expand the North Carolina Home Protection Pilot Program and Loan Fund

S.L. 2005-276, Sec. 20.2 (SB 622, Sec. 20.2) directs the North Carolina Housing Finance Agency to continue, develop, implement, and administer a pilot program to assist North Carolina workers who have lost jobs as a result of changing economic conditions when the workers are in need of assistance to avoid losing their homes to foreclosure.

This section became effective July 1, 2005. (GSP)

General Assembly Police Jurisdiction

S.L. 2005-359 (HB 1086) renames the State Legislative Building security force as the General Assembly special police. The General Assembly special police officers, while on official duty, have the same powers as city police officers in the following jurisdictions:

- In the area surrounded by the innermost right-of-way of Interstate 440.
- In any part of the State:

- While accompanying a member of the General Assembly who is conducting, or traveling to or from, his or her official duties.
- While preparing for, or providing security to, a session of either House, or both Houses, of the General Assembly, or at official events related to the session.

The General Assembly officers are authorized to arrest persons outside of their jurisdictional area, when the offense occurred within their jurisdictional area and the arrest is made during the person's immediate and continuous flight from that area.

The act also makes conforming changes to reflect the name change to General Assembly special police.

This act became effective September 7, 2005. (EC)

Criminal Record Checks/Archaeological Operation

S.L. 2005-367 (SB 796) requires the Department of Cultural Resources to conduct criminal history record checks of all applicants for permits and licenses to conduct archaeological operations and investigations and consider any criminal history found in determining whether to issue a permit or license to the applicant. The act also provides a procedure for the Department of Justice to assist the Department of Cultural Resources in providing the criminal history of any applicant.

This act became effective October 1, 2005, and applies to applications for permits or licenses submitted to the Department of Cultural Resources on or after that date. (GSP)

Boards and Commissions

River Basin Commissions Clarifying Amendments

S.L. 2005-37 (HB 908). See **Environment and Natural Resources.**

Code Officials Professionalism

S.L. 2005-102 (HB 658). See **Occupational Boards and Licensing**.

Title Change/Safety and Health Review Board

S.L. 2005-133 (HB 874). See **Labor and Employment**.

Rural Economic Development Center (e-NC Authority)

S.L. 2005-276, Sec. 13.12(g) (SB 622, Sec. 13.12(g)) changes the membership of the e-NC Authority from 9 voting members and 6 non-voting ex officio members to 15 voting members. Previously, ex officio members were non-voting. Ex officio members include the Secretary of Commerce, the State Chief Information Officer, the President of the North Carolina Rural Economic Development Center, the Executive Director of the North Carolina Justice and Community Development Center, the Executive Director of the North Carolina League of Municipalities, and the Executive Director of the Association of County Commissioners. This section makes these members voting members of the Authority.

This section became effective July 1, 2005. (TH)

Industrial Commission Salaries/In-Range Salary Adjustments

S.L. 2005-276, Sec. 29.20 (SB 622, Sec. 29.20), as amended by S.L. 2005-345, Sec. 41 (HB 320, Sec. 41) authorizes the Chairman of the Industrial Commission to designate one deputy commissioner as chief deputy commissioner, sets the salary of the chief deputy commissioner, sets the salaries of deputy commissioners, provides for longevity pay for the administrator, executive secretary, chief deputy commissioner, and deputy commissioners of the Industrial Commission, and sets out a method to fund these salary adjustments.

This section became effective July 1, 2005. (GSP)

Exempt Banking Commission Staff from State Personnel Act

S.L. 2005-284 (SB 644). See **Labor and Employment**.

Manufactured Housing License Amendments

S.L. 2005-297 (HB 803) authorizes the Manufactured Housing Board to charge a late filing fee of not more than $300 when licensees apply for renewal of their license after the license has expired. The act also eliminates the supplemental license fee for each additional place of business and clarifies that a license must be obtained and the fee paid for each place of business. The Manufactured Housing Board is a Board within the Department of Insurance that is charged with regulating the manufactured housing industry. The Board must license a person before the person can engage in business in the State as a manufactured home manufacturer, dealer, salesperson, or set-up contractor. The Board recommended these changes.

This act became effective August 22, 2005. (KCB)

Amend Auctioneer Licensing Laws

S.L. 2005-330 (HB 1271) makes several changes to the Auctioneer Licensing Law, including:

- Adding definitions for the terms "Auctioneering," "Consignment," and "Designated Person."
- Modifying the exemptions from the law to provide that the exemption does not apply if the person or entity conducting or organizing the sale accepts consignments to be sold at auction where the consignor receives any proceeds from the sale or if the person or entity is conducting or organizing one of the following sales for compensation:
  - Sales at auction conducted by any public authority.
  - Any sale required by law to be at auction.
  - Sales conducted by any charitable or religious organization.
  - Sales conducted by a civic club, not exceeding one sale per year.
  - Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods, and resales of goods conducted under the Uniform Commercial Code.
- Clarifying that auctioneers hired by motor vehicle dealers to auction motor vehicles are not exempt from the provisions of the Auctioneer Law.
- Removing reference to the City of Raleigh as the location for examinations.
- Changing the statutes related to recordkeeping to require that additional detail be provided in the records of sales at auctions maintained by the licensee and in the settlement statement provided to the seller or consignor of goods.

- Authorizing the Auctioneer Licensing Board to suspend a license when the health, safety, and welfare of the public are at risk, such as in the event of a potential loss of consigned items or potential loss of funds. The suspension proceeding would be subject to the requirements of the Administrative Procedure Act.

This act became effective August 26, 2005. (KCB)

Board of Science and Technology Report on Education and Economic Growth

S.L. 2005-345, Sec. 25 (HB 320, Sec. 25) directs the North Carolina Board of Science and Technology to prepare a biennial report on the impact of education on economic growth in each county.

This section became effective July 1, 2005. (GSP)

Edenton Historical Commission

S.L. 2005-421, Sec. 3.1 (HB 1207, Sec. 3.1) changes how members of the Edenton Historical Commission are appointed, to authorize the Governor to appoint 22 members, the President Pro Tempore of the Senate to appoint 4 members, and the Speaker of the House of Representatives to appoint 4 members.

This section became effective September 22, 2005. (GSP)

Budget Process and Use of State Funds

Public Finance Changes

S.L. 2005-238 (HB 1117). See **Finance**.

State Grant Recipients/Conflict of Interest Policy/No Overdue Tax debts/Other Technical and Clarifying Changes

S.L. 2005-276, Sec. 6.9 (SB 622, Sec. 6.9) establishes a conflict of interest policy and a no overdue tax policy for non-State entities (grantees) receiving State funds and provides penalties for making false statements regarding such policies.

Section 6.9(a) adds a new subsection (b1) to G.S. 143-6.2 that requires every grantee to file a copy of the grantee's conflict of interest policy with the State agency disbursing funds to the grantee prior to the funds being released. The policy must address situations in which the grantee's employees or governing board members may indirectly or directly benefit, except as employees or board members, from the grantee's disbursing of State funds. The policy must include actions to be taken by a grantee or individual to avoid conflicts of interest and the appearance of impropriety.

Section 6.9(a) also adds a new subsection (b2) to G.S. 143-6.2 requiring a grantee to file a written statement, prior to the receipt of funds, stating that the grantee does not have any overdue federal, State, or local tax debt. If the Director of the Budget finds that a non-State entity has failed to submit or falsified information required under G.S. 143-6.2, the Director must take appropriate administrative action which may include suspending or withholding the disbursement of State funds and recovering State funds previously disbursed.

Section 6.9(b) amends G.S. 143-34 by adding a new subsection providing that a false statement by a non-State entity regarding overdue taxes in violation of G.S. 143-6.2(b2) is a Class A1 misdemeanor.

This section applies to all State grants awarded or appropriated on or after July 1, 2005. (BR)

Payroll Deduction for Employees' Associations

S.L. 2005-276, Sec. 6.35 (SB 622, Sec. 6.35) amends G.S. 143-3.3(g), the statute that allows employees of the State, the public schools, or community colleges to authorize periodic payroll deductions that are paid to an employees' association. The changes also expand the coverage of the statute to include employees of the political subdivisions of the State. The requirement that a majority of the members of the association must be public employees has been deleted. The new requirement is that at least 500 members of the association must be public employees.

This section became effective July 1, 2005. (KG)

Civil Penalty and Forfeiture Funds Appropriations

S.L. 2005-276, Sec. 6.37 (SB 622, Sec. 6.37). See **Education** and **Finance**.

Industrial Development Fund

S.L. 2005-276, Sec. 13.5 (SB 622, Sec. 13.5) amends the purposes for which grants from the Industrial Development Fund may be used to include transportation infrastructure that is located on the site of the building or directly related to the operation of the specific eligible industrial activity.

This section became effective July 1, 2005. (KG)

One North Carolina Small Business Program

S.L. 2005-276, Sec. 13.14 (SB 622, Sec. 13.14) creates the One North Carolina Fund, a special account to be used to fund the North Carolina Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) Program and the North Carolina SBIR/STTR Matching Funds Program. State grants for both programs are awarded by the North Carolina Board of Science and Technology.

The North Carolina SBIR/STTR Incentive Program is designed to foster job creation and economic development in the State by providing grants to eligible businesses to offset costs associated with applying for Phase I federal Small Business Administration SBIR/STTR grants. To be eligible for State grants under the Program a business:

- Must be a for-profit, North Carolina-based business.
- Must have submitted a qualified SBIR/STTR proposal.
- Must satisfy all federal SBIR/STTR requirements.
- Must not receive concurrent funding support from other sources.
- Must certify that at least 51% of the research in the federal SBIR/STTR proposal will be conducted in the State.
- Must demonstrate its ability to conduct the necessary research.

State grants may be awarded for up to 50% of the costs of preparing and submitting the proposal, but may not exceed $3,000.

The North Carolina SBIR/STTR Matching Funds Program provides grants to eligible businesses to match funds received as a federal SBIR/STTR Phase I award and to encourage eligible businesses to apply for Phase II awards. Eligibility requirements for State grants under

the program are identical to those listed above for the SBIR/STTR Incentive Program. The Board of Science and Technology may award a State a matching grant to of up to $100,000.

The North Carolina Department of Commerce is authorized to develop guidelines for the administration of the One North Carolina Small Business Program and must publish a report on the use of State funds no later than one month after the end of each fiscal quarter. The report must be submitted to the Joint Legislative Commission on Governmental Operations, the Chairs of the House and Senate Finance Committees, the Chairs of the House and Senate Appropriations Committees, and the Fiscal Research Division of the General Assembly.

This section became effective July 1, 2005. (TH)

Tryon Palace Historic Sites and Gardens Fund

S.L. 2005-276, Sec. 19A.1 (SB 622, Sec. 19A.1) creates the Tryon Palace Historic Sites and Gardens Fund as a special and nonreverting fund in the Division of Tryon Palace Historic Sites and Gardens. The Fund is to be used for repair, renovation, expansion, and maintenance at the Tryon Palace Historic Sites and Gardens. All entrance fee receipts will be credited to the Fund. The Tryon Palace Commission is directed to submit an annual report by September 30 of each year on the source and amount of funds credited to the Fund and the purpose and amount of funds expended from the Fund to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division.

This section became effective July 1, 2005. (KCB)

Principal Clerks' Compensation

S.L. 2005-276, Sec. 19B.1 (SB 622, Sec. 19B.1) provides that in addition to their statutorily prescribed salaries, each General Assembly principal clerk may also receive such additional compensation as approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate for additional employment duties beyond those provided by the rules of the respective Houses.

This section became effective July 1, 2005. (KCB)

Salary Supplements for Personnel Employed in Certain State Agencies

S.L. 2005-276, Sec. 29.19 (SB 622, Sec. 29.19) authorizes the Secretary of Health and Human Services, the Secretary of Juvenile Justice and Delinquency Prevention, and the Secretary of Correction to set salary supplements of at least 5% for teachers, instructional support personnel, and school-based administrators employed by their respective Departments.

This section became effective July 1, 2005. (GSP)

Employment Security Commission Chairman Prospective Salary Change

S.L. 2005-276, Sec. 29.20A(a) (SB 622, Sec. 29.20A(a)) amends G.S. 96-3 to require that the salary of the Employment Security Commission chairman be the same as the salary of the Secretary of Commerce. This section becomes effective upon the appointment of the next chairman of the Employment Security Commission.

S.L. 2005-276, Section 29.20A(b) (SB 622, Sec. 29.20A(b)) amends G.S. 96-3 to provide that the current chairman of the Employment Security Commission does not accrue longevity

pay. This section became effective September 1, 2005 and expires with the appointment of the next chairman of the Employment Security Commission. (EC)

Volunteer Rescue/Emergency Medical Services Funding

S.L. 2005-283 (SB 687) directs the North Carolina Association of Rescue and Emergency Medical Services, Inc. (EMS), to provide the Department of Insurance with an advisory priority listing for rescue equipment eligible for grant funding, increases the maximum grant amount from $15,000 to $25,000 under the Volunteer Rescue/EMS Fund, deletes language that allows grant funds to be used for the payment of highway use taxes, increases the maximum number of paid positions a rescue unit may have to remain eligible for a grant from 3 to 10, and allows a unit that provides only emergency medical services to be eligible for grants, provided the eligible rescue and rescue/EMS units have already been funded.

This act became effective October 1, 2005. (GSP)

Investments of State and Local Funds

S.L. 2005-394 (HB 1169) authorizes another option for the investment of State, community college, and local funds through certain certificates of deposit of approved financial institutions located inside and outside the State under the following conditions:

- Government funds would be invested through a bank or savings and loan association that has a rate of return equal to or greater than the rate of return available in the market on United States government or agency obligations of comparable maturity.
- The selected financial institution arranges for the deposit of the funds in one or more federally insured financial institutions where no other funds of the government entity are deposited.
- The full amount of the deposit and the interest are covered by federal deposit insurance.
- The selected financial institution acts as the custodian of the government funds for certificates of deposit issued for the government account.
- At the time the government funds are deposited and certificates of deposit are issued, the selected financial institution receives deposits from customers of other federally insured financial institutions equal to or greater than the amounts invested by the governmental entity in the selected financial institution.

This act became effective October 1, 2005. (WR)

Public Hospital Investments

S.L. 2005-417 (SB 443) authorizes both public hospitals and the University of North Carolina Hospitals at Chapel Hill to deposit certain funds with the State Treasurer for investment. These funds include any funds held in reserves or sinking funds (assets and their earnings earmarked for the retirement of bonds or other long-term obligations) and any funds not required for immediate disbursement. The State Treasurer may require a minimum deposit and may assess a reasonable fee as a condition of participation. Funds deposited by a hospital will remain the funds of that hospital and interest or investment income earned will be prorated and credited to the contributing hospital on the basis of amounts contributed.

This act became effective October 1, 2005. (BP)

Capital Facilities and State Property

Currituck Property Conveyance

S.L. 2005-18 (HB 1061). See **Local Government**.

Two Additions to State Park System

S.L. 2005-26 (SB 586). See **Environment and Natural Resources**.

Repeal Sunset on University of North Carolina Design Contracts/Report

S.L. 2005-30 (HB 1464) removes a sunset, thereby making permanent the authority of The University of North Carolina (UNC) to manage all UNC capital projects requiring an estimated expenditure of $2 million or less. The UNC Board of Governors (BOG) may delegate its authority to a constituent institution if the institution is qualified under guidelines adopted by the BOG and approved by the State Building Commission and the Director of the Budget.

The BOG must submit an annual report to the State Building Commission that includes:

- A list of projects that fall under the delegation.
- The estimated cost of each project along with the actual cost.
- The name of each person awarded a contract under the delegation.
- Whether the person or business awarded a contract under the delegation meets the definition of "minority business" or "minority person" under G.S. 143-128.2(g).

This act became effective August 22, 2005. (KG)

State Property/Governmental Operations Notice

S.L. 2005-39 (HB 699) provides that when a State agency wants to acquire real property valued at more than $25,000, the Department of Administration (DOA) may proceed with the acquisition after DOA has provided the co-chairs of the Joint Legislative Commission on Governmental Operations with written notice 30 days in advance of the acquisition.

This act became effective May 12, 2005. (KG)

Federal Jurisdiction Over Land

S.L. 2005-69 (HB 236) provides that the State automatically consents to federal acquisition of specifically described land that is less than 25 acres only or is to be added to named military installations. The act provides that the State cedes partial jurisdiction to the federal government only over land acquired with the State's consent. The federal government must indicate its acceptance of jurisdiction by filing a notice with the registrar of deeds in the applicable county or counties.

This act became effective May 27, 2005. (HP)

Water and Sewer District Boundaries; Per Diem

S.L. 2005-127 (SB 15) authorizes the Board of County Commissioners to transfer property that is owned by the State and located in a county water and sewer district in that county to another county and water and sewer district in that county, if the State acquired the

property from the county. The act also increases from $2,000 to $4,000 the maximum annual per diem that may be paid to members of a water and sewer authority.

This act became effective June 29, 2005. (GSP)

Green Square Project

S.L. 2005-255 (SB 692) authorizes the Green Square Project in central Raleigh, involving the construction of a new State Employees Credit Union Building, an office building for the Department of Environment and Natural Resources, and a Nature Research Center associated with the Museum of Natural Sciences.

This act became effective August 5, 2005. (GSP)

Monitor and Evaluate Lease Purchase and Installment Purchase Activity

S.L. 2005-276, Sec. 6.17 (SB 622, Sec. 6.17) requires the State Office of Budget and Management to develop and implement a management process that:

- Standardizes the criteria used by executive branch agencies to evaluate the business case for lease purchase or installment purchase acquisitions.
- Provides for executive branch agency budget submissions that show current and proposed debt service requirements occasioned by existing and proposed purchase agreements.
- Provides that all executive branch lease purchase and installment purchase agreements:
  - Contain provisions to protect State interests against insolvency or nonperformance, and
  - Are centrally inventoried and monitored.
- Includes debt accruing through lease purchase and installment purchase activity by executive branch agencies in the annual report of the Debt Affordability Advisory Committee required by statute.
- Evaluates the advantages of a pooled or master lease, or installment arrangement.

The State Office of Budget and Management is also directed to prepare consolidated reports summarizing all lease purchase and installment purchase expenditures in the current year and the upcoming fiscal year. The reports are due to the Chairs of the House of Representatives and Senate Appropriations Committees, and the Fiscal Research Division, on the first day of the 2006 and 2007 Regular Sessions of the General Assembly. The section does not apply to The University of North Carolina.

This section became effective July 1, 2005. (HP)

Limit Disposition of Dorothea Dix and Blue Ridge Road Properties

S.L. 2005-276, Sec. 6.25 (SB 622, Sec. 6.25) prohibits the Department of Administration from selling, leasing, renting, allocating or reallocating, or otherwise disposing of the following without the prior approval of the General Assembly:

- The property encompassing the Dorothea Dix Hospital campus.
- The property described in the 1995 Capital Area Master Plan for State Government, Blue Ridge Road Area, developed by O'Brien/Atkins, except for the Special Development District.

This section became effective July 1, 2005, and expires on September 1, 2007. (HP)

State Land Not Subject to Municipal Control

S.L. 2005-280 (SB 669) repeals a provision enacted in the 2004 Technical Corrections Act that made municipal zoning applicable to land owned by the State or owned by a political subdivision of the State.

This act became effective August 18, 2005. (KG)

Procurement of Professional Services

S.L. 2005-370 (HB 576) allows community college capital improvement projects to be exempted from the public advertising requirements for design services where the expenditure of public funds is less that $100,000. The act also allows an exemption from the advertising requirements for a community college capital improvement project that is estimated to cost less than $300,000 if the design services to be rendered are under a publicly announced open-end design agreement that complies with policies and procedures adopted by the State Board of Community Colleges and approved by the State Building Commission.

This act became effective October 1, 2005. (WR)

Official North Carolina Designations

Venus Flytrap Official Carnivorous Plant

S.L. 2005-74 (SB 116) designates the Venus Flytrap (Dionaea muscipula) as North Carolina's official carnivorous plant.

This act became effective June 7, 2005. (TM)

State Traditional Pottery Birthplace

S.L. 2005-78 (SB 884) designates the Seagrove area, including portions of Randolph, Chatham, Moore, and Montgomery Counties, as the official location of the birthplace of North Carolina traditional pottery.

This act became effective June 7, 2005. (TM)

Adopt Official State Dances

S.L. 2005-218 (SB 128) adopts clogging as the official folk dance of North Carolina and shagging as the official popular dance of the State.

This act became effective July 20, 2005. (TM)

State Christmas Tree/State Freshwater Trout

S.L. 2005-387 (HB 1316) designates the Fraser Fir (Abies fraseri) as the official Christmas tree of the State of North Carolina. The act also adopts the Southern Appalachian strain of brook trout (Salvelinus fontinalis) as the official freshwater trout of the State.

This act became effective September 13, 2005. (TM)

Purchase and Contracts

University of North Carolina Service Contracts

S.L. 2005-125 (HB 678) provides that The University of North Carolina is not required to obtain the prior approval of the State Purchasing and Contract office before it solicits bids for service contracts of up to 10 years or less.

This act became effective June 29, 2005. (KG)

State Contracts/Report Outsourcing

S.L. 2005-169 (HB 800) requires vendors who submit bids for State contracts to provide, along with a bid, a statement disclosing where services under the contract will be performed and whether any services under the contract are anticipated to be performed outside the United States. The act notes that the provision is not intended to contravene any existing treaty, law, agreement, or regulation of the United States. The act also requires the Secretary of Administration to keep the disclosure statements and report annually to the Joint Legislative Committee on Governmental Operations on the number of State contracts anticipated to be performed outside the country.

This act became effective October 1, 2005, and applies to all bids submitted after that date. (BR)

Economic Development/North Carolina Product Preference

S.L. 2005-213 (SB 879) removes the January 1, 2007, sunset on the statute providing for a preference for the purchase by State agencies of North Carolina products and providing for a percentage increase in the bid of a non-North Carolina bidder if the home state of the non-North Carolina bidder adds a percentage increase on North Carolina bidders in that state. The act also amends the statute to require the Secretary of Administration to establish and maintain a list of resident bidders that pay unemployment or income taxes in the State and whose principal place of business is in the State who have expressed an interest in bidding on contracts for specific goods and services to be purchased by the State. The act also requires the Secretary to notify all resident bidders who have expressed an interest in bidding on contracts of the nature the Secretary is putting to bid. The required notice may be sent electronically.

This act becomes effective January 1, 2006. (BR)

Miscellaneous

Hurricane Relief Act of 2005

S.L. 2005-1 (SB 7) provides for disaster assistance to individuals, businesses, and public agencies that sustained damage from one or more of the six hurricanes that struck North Carolina during the late summer and early fall of 2004. The act directs the Governor to reestablish the disaster assistance programs created after Hurricane Floyd and to modify and create new programs to meet the needs of the areas affected. In particular, the act directs that the State Hazard Mitigation Grant Program be modified to provide housing buyout and relocation assistance to those persons whose homes were damaged or destroyed by debris slides and that the Crisis Housing Assistance Fund be modified to provide assistance to persons who otherwise would be eligible but did not file an application for a Small Business Administration (SBA) Real Property disaster loan.

The counties eligible to receive assistance under the act include the 19 counties that were designated as eligible for federal individual assistance and public assistance (Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, and Yancey), the 26 counties that were eligible for federal public assistance (Alamance, Alexander, Bladen, Cabarrus, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Forsyth, Gaston, Graham, Guilford, Hoke, Iredell, Lincoln, Mecklenburg, Randolph, Robeson, Rockingham, Rutherford, Scotland, Stokes, Union and Wilkes), and those counties that were not included in a federal disaster declaration but were included in a State disaster declaration as a result of the damages sustained by one of the hurricanes that occurred in 2004.

The act authorizes the Governor to use funds in the Disaster Relief Reserve Fund to match federal funds, provide grants to local governments, and transfer funds to federal agencies and local governments under cooperative agreements whereby they administer programs on behalf of the State. The Disaster Relief Reserve Fund is subrogated to a person's insurance rights for damage to their home if the home has been purchased or relocated under the Hazard Mitigation Grant Program or through the State Acquisition and Relocation Fund. State income tax deductions are provided for individuals and businesses for amounts paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund. The deduction does not apply to amounts received as payments for goods and services provided by the taxpayer. No State funds may be used for the construction of any new residence within the 100-year flood plain unless the construction is in an area regulated by a local floodplain management ordinance. Homeowners in the 100-year floodplain who receive help under this act must have federal flood insurance in place to receive future assistance for flooding losses.

The act directs the Department of Crime Control and Public Safety (DCCPS) to update the flood insurance rate maps for all of the counties included in federal disaster declarations for Hurricanes Frances and Ivan. The Department of Environment and Natural Resources (DENR), in cooperation with DCCPS, is to insure that streambed maps and maps showing areas vulnerable to landslides are available for the same multicounty area. Streambed maps are to be annotated to show areas of actual and potential stream bank erosion.

DENR is also directed to study the causes of flooding in Canton, Biltmore Village, Newland, Clyde, and other affected areas as deemed necessary to determine what can be done to prevent or mitigate future floods. DENR may request assistance from the United States Army Corps of Engineers in conducting the study. The Governor is to report to the Joint Legislative Commission on Governmental Operations on any plans to implement the recommendations of the study prior to any transfer of funds for such implementation.

Finally, the act directs the Governor to report to the Appropriations Committees of the House and Senate regarding the implementation of the act within 30 days of it becoming law and to report monthly thereafter until the adjournment of the 2005 Regular Session. After the end of Session, the Governor is to report to the Joint Legislative Commission on Governmental Operations by October 15, 2005, and quarterly thereafter.

This act became effective February 25, 2005, except that income tax provisions of the act are effective for taxable years beginning on or after January 1, 2004. (BR)

North Carolina State University Dairy Sales

S.L. 2005-20 (HB 752). See **Education**.

Inspection of Correctional Facilities

S.L. 2005-98 (HB 1226) amends State law to provide that prisons constructed through lease-purchase agreements are not subject to county or municipal building codes, or to inspection by county or municipal authorities. The act authorizes the Commissioner of Insurance

to conduct inspections, reviews, and examinations of the prison facility, including electrical inspections. The Department of Administration is authorized to approve plans and specifications for the building.

This act became effective June 21, 2005. (HP)

Copies of Files/Appointed Appellate Attorneys

S.L. 2005-148 (SB 689). See **Courts, Justice, and Corrections.**

Interstate Insurance Product Regulation Compact

S.L. 2005-183 (HB 673). See **Insurance**.

Drinking Water Supply Reservoir Protection

S.L. 2005-190 (SB 981). See **Environment and Natural Resources**.

Prior Consultation with the Joint Legislative Commission on Governmental Operations

S.L. 2005-276, Sec. 6.7 (SB 622, Sec. 6.7) amends G.S. 120-76.8, which sets out the requirements of prior consultation with the Joint Legislative Commission on Governmental Operations (Commission) under certain circumstances. The amendments add a new subsection requiring that any agency or other entity that must consult with the Commission prior to taking an action must submit a detailed report of the action under consideration to the Chairs of the Commission. If the Commission does not meet to hear the consultation within 90 days of receiving the report, the consultation requirement is satisfied. The section does not apply to consultations on the establishment of new fees and charges and increases in existing fees and charges governed by G.S. 12-3.1.

Section 6.7(b) amends the provisions of G.S. 143-23(a1) providing for expenditures within a program in excess of the amount appropriated. Section 6.7(b) deletes the provision in G.S. 143-23(a1) that allows the Director of the Budget to satisfy the reporting and consulting requirements of the subsection by reporting to or consulting with the Appropriations Chairs of the House and Senate when the Joint Legislative Commission on Governmental Operations does not meet for more than 30 days.

This section became effective July 1, 2005. (BR)

Notary Fee Increase

S.L. 2005-328 (HB 1217). See **Finance**.

North Carolina State Lottery Act

S.L. 2005-344 (HB 1023) and Section 31.1 of S.L. 2005-276 (SB 622, Sec. 31.1) establish a State Lottery (Lottery). Funds from the Lottery will be used to support school construction and to "further the goal of providing enhanced educational opportunities so that all students in the public schools can achieve their full potential."

Operation of the Lottery:

The purpose of the Lottery as stated is to generate funds "for the public purposes described in this Chapter," i.e. funding class size reduction and prekindergarten programs, school

construction, college and university scholarships, and other educational needs as described in the act. The use of video gaming machines is expressly prohibited as a lottery game.

The act establishes a nine member Commission to establish and oversee the operation of the Lottery. The Commission is housed in the Department of Commerce for budgetary purposes, but otherwise would be independent. The members are appointed by the Governor (five members), by the General Assembly upon the recommendation of the President Pro Tempore of the Senate (two members), and by the General Assembly upon the recommendation of the Speaker of the House of Representatives (two members). Members serve staggered five-year terms. The Governor appoints the first chair of the Commission from among the membership, but after the first year the Commission will select its chair. Of the members of the Commission, one is required to have at least five years' law enforcement experience, one must be a certified public accountant, and one must have retail sales experience. In making appointments to the Commission, the appointing authorities must consider the composition of the State with regard to gender, ethnicity, race, geographic representation, and age composition.

The Commission determines how to operate the Lottery (subject to the legal provisions chapter), including determining the types of lottery games and the rules for the games, establishing a system to claim prizes, specifying the manner of distributing lottery tickets, charging a fee for the criminal record check required of lottery vendors, and specifying the roles of the Director of the Lottery and other employees of the Commission with the following restrictions:

- No employee of the Commission may have a financial interest in any lottery vendor or lottery contractor, other than an interest in a mutual fund.
- No employee of the Commission with decision-making authority may participate in any decision involving the retailer or vendor with whom the employee has a financial interest.
- No employee of the Commission who leaves the employment of the Commission may represent any vendor or retailer before the Commission for a period of two years following termination of employment with the Commission.
- A background investigation must be conducted on each applicant for employment with the Commission.
- The Commission must bond all employees with access to lottery funds or revenue and security.

The Commission is also responsible for prescribing the nature of lottery advertising that complies with the following:

- All advertising must include resources for responsible gaming information.
- No advertising may intentionally target specific groups or economic classes.
- No advertising may be misleading, deceptive, or present any lottery game as a means of relieving any person's financial or personal difficulties.
- No advertising may have the primary purpose of inducing persons to participate in the Lottery.
- No advertising may contain cartoon characters or false, misleading, or deceptive information.
- All advertising is to contain the odds of winning the game.

The Commission selects a Lottery Director (Director) to operate and administer the Lottery and to serve as Secretary of the Commission. The Director in turn hires the Commission's employees. The Director and the Commission employees are exempt from the State Personnel Act. The Director, under supervision of the Commission, may enter into contracts with lottery retailers (the persons who would be selling the tickets), lottery contractors (the persons who would be providing goods and services to the Commission), and other states (for multistate lotteries). The act requires the Director to provide for the security of the Lottery, confer with the Commission on operations and offer recommendations for improvements, and provide monthly financial reports. The Commission is required to engage an independent firm to conduct annual audits by the State Auditor, and independent audits of Lottery security and operations.

The act prescribes certain aspects of the Lottery, including:

- The appearance of tickets (unique numbers, no names or photographs of elected officials, rules, odds, and may contain certain cartoon characters).
- Limitations on games (no coins or currency may be dispensed, no games based on the outcome of a sporting event).
- Offering a detailed tabulation of the estimated number of prizes to be awarded for games.
- No sales of tickets to minors (Class 1 misdemeanor) or payment of prizes to minors.
- No resales of tickets for more than the price set by the Commission.
- Procedures for drawings and paying prizes.
- Protection of the identification of winners who are domestic violence victims or participants in the Address Confidentiality Program.
- Procedures for offsetting the winnings of persons who owe a debt to a governmental entity.
- The development of information concerning gambling addiction and treatment that would be provided to the public.

The act authorizes the Director, upon the Commission's approval, to contract with lottery game retailers to se

ll tickets or shares for lottery games. To the extent practicable, the Director is required to meet the minority participation goals under Article 8 of Chapter 143 of the General Statutes. Natural persons under age 21 and persons who would be engaged exclusively in the business of selling lottery tickets or operating electronic computer terminals or other devices solely for entertainment could not be lottery retailers. Additionally, persons not current in their income taxes or a person residing in the same household as a member of the Commission, the Director or an employee of the Commission could not be a lottery retailer. Lottery game retailers would be compensated at 7% of the retail price of tickets sold. Lottery game retailers would have to display a certificate of authority signed by the Director and would have to account for tickets and money collected in a manner prescribed by the Commission. Lottery retailers would also be restricted in lobbying the members of the Commission to $100 per calendar year.

The Commission is exempt from the procurement provisions of Chapter 143 of the General Statutes but is able to use the services of the Department of Administration in procuring goods and services for the Commission. Contracts of the Commission are subject to current public contracting provisions in Article 8 of Chapter 143 of the General Statutes for purchases of goods and services of $90,000 or more and all of the following requirements:

- The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:
  - The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.
  - The time and place for opening of the proposals.
  - A statement reserving to the Commission the right to reject any or all proposals.
- Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.
- All proposals must be accompanied by a bond or letter of credit in an amount of at least 5% of the proposal and the fee to cover the cost of the criminal record check.
- The Commission has complied with G.S. 143-128.2 and G.S. 143-128.3 (minority participation goals).
- The Commission may not award a contract to a lottery vendor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract.

- The Commission has investigated and compared the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery vendors.
- The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.
- The Commission must award the contract to the responsible lottery vendor who submits the best proposal that maximizes the benefits to the State.

Upon the completion of the bidding process, a contract may be awarded to a lottery contractor with whom the Commission has previously contracted for the same purposes.

Before a contract is awarded, the Director must conduct a thorough background investigation of all of the following:

- The vendor to whom the contract is to be awarded.
- Any parent or subsidiary corporation of the vendor to whom the contract is to be awarded.
- All shareholders with a 5% or more interest in the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.
- All officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded.

Information from the lottery vendor must be updated periodically, and the lottery contractor is also restricted in lobbying the members of the Commission to $100 per calendar year.

Counties and municipalities would be preempted from adopting laws or ordinances to restrict the Lottery.

The act requires the State Treasurer to loan the Commission up to $10 million for start up costs. The Commission would be required to repay the loan, with interest, within 24 months.

Use of the Monies Collected by the Lottery:

The act establishes a North Carolina State Lottery Fund for the purposes of operating the Commission and the lottery games. Income to the Lottery Fund would include proceeds from ticket sales and interest earned by the Fund. Of the total annual revenues in the Lottery Fund:

- 50% would be allocated to pay prizes.
- 7% for compensation of the lottery retailers.
- 8% would be allocated for Lottery expenses. Of the 8% for expenses, up to 1% may be used for advertising and $1 million is to be transferred annually to the Department of Health and Human Services for gambling addiction programs.
- 35% would be transferred to the Education Lottery Fund and generally distributed as follows:
  - 5% of the net revenue of the prior year to the Education Lottery Reserve Fund, which is capped at $50 million.
  - The remaining net revenue will be distributed as follows:
    a. 50% to support reduction of class size in early grades to class size allotments not exceeding 1:18 in order to eliminate achievement gaps and to support academic prekindergarten programs for at-risk four-year-olds who would otherwise not be served in a high-quality education program in order to help those four-year-olds be prepared developmentally to succeed in school.
    b. 40% to the Public School Building Capital Fund in accordance with G.S. 115C-546.2. This section would amend G.S. 115C-546.2, the Public School Building Capital Fund, to provide a formula for allocating the lottery revenue for school construction. 65% of the lottery revenue would be allocated on a per average daily membership basis. The remaining 35% of the lottery revenue would be allocated to the schools located in whole or part of a county in which the effective county tax rate, as a percentage of the effective State average tax rate is greater than 100%. No county has to

provide matching funds for the lottery revenue, may use the money to retire indebtedness incurred on or after January 1, 2003, and may not use the money for technology needs.

c. 10% to the State Educational Assistance Authority to fund college and university scholarships in accordance with Article 35A of Chapter 115C of the General Statutes. Features of the scholarship program would include:
   - Eligible students must be "needy." Need would be determined using the federal methodology, which determines the student's and family's capacity to pay for postsecondary education each year. A student would not be eligible if the student's expected family contribution exceeds $5,000.
   - Eligible students must meet all qualifications for a federal Pell Grant, other than the expected family contribution requirement.
   - Eligible students must be enrolled at an eligible postsecondary institution (defined as a constituent institution of The University of North Carolina, a community college, or a nonpublic postsecondary institution).
   - Eligible students must be legal residents of North Carolina.
   - Once in school, a student must maintain satisfactory academic progress to continue to be eligible.

The act also makes various conforming changes to the gambling statutes (Section 3); the Umstead Act (Section 5); the Department of Justice statutes, in order to conduct background checks of employees, retailers, vendors, and contractors (Section 6); the escheats statutes, to prevent unclaimed prize funds from reverting (Section 7); the statute that prohibits General Assembly members from serving on certain boards and commissions (Section 8); the State Personnel Act (Section 9); and the statute concerning investment of funds by the State Treasurer (Section 10); taxation of winnings (Sections 10.2-10.4); and grants an exemption from the Administrative Procedure Act (Section 11.1). The act makes Alcohol Law Enforcement the enforcing law agency for the Lottery. The act requires the Department of Health and Human Services to study the effects of the establishment and the operation of the Lottery on the incidence of gambling addiction and report the results of its study, including any proposed legislation, to the health and human services appropriations subcommittees of both houses, the Joint Legislative Health Care Oversight Committee, and the Fiscal Research Division not later than January 1, 2007.

Except as otherwise provided, this act became effective August 31, 2005. (EC)

Domestic Violence Recommendations

S.L. 2005-356 (HB 569) contained the recommendations of the House Select Committee on Domestic Violence. The act:

- Creates a Joint Legislative Committee on Domestic Violence (JLCDV).
- Directs the Administrative Office of the Courts to study the utilization of Global Positioning Satellite (GPS) technology to track criminal offenders, and report to the JLCDV on a pilot program to use GPS as a pretrial condition of release for persons arrested for domestic violence offenses.
- Directs the Department of Correction to report on measures it is taking to supervise domestic violence offenders.
- Directs the Administrative Office of the Courts to:
  - Expand the Family Court Model as resources allow;
  - Study the automation of court records; and
  - Report its results and recommendations to the JLCDV and the North Carolina Courts Commission no later than January 1, 2007.

This act became effective September 7, 2005. (HP)

Display of Official Governmental Flags

S.L. 2005-360 (HB 829) creates a new section in Chapter 144, G.S. 144-7.1, and provides that local governments may not prohibit an official governmental flag from being flown or displayed if it is done in accordance with the federal statutes and done with the consent of the person who has lawful control of the property. The act also specifies that reasonable restrictions on flag size, number of flags, location, and height of flagpoles are allowed for the purposes of protecting the public's health, safety, and welfare so long as the restrictions do not discriminate against the flag. An "official governmental flag" includes the flag of the Unites States of America, of nations recognized by the Unites States, the North Carolina State flag, the flag of any state or territory of the Unites States, or of a political subdivision of any state or territory of the United States.

This act became effective October 1, 2005, and applies to the construction of ordinances adopted before the effective date and to ordinances adopted on or after the effective date. (BR)

Economic Development – Public Records

S.L. 2005-429 (SB 393) specifically requires all public records relating to the expansion or location of a business or industrial project in the State, that are not otherwise confidential by statute, to be made available to the public within 15 business days of the date the project is announced by the governmental agency or the date the records are requested, whichever is later. If the agency cannot produce all the records within 15 business days, the agency is to notify the person requesting the records when the records will be available.

This act became effective September 22, 2005. (EC)

Amend Lobbying Laws

S.L. 2005-456 (SB 612) amends the lobbying laws by including goodwill lobbying, increasing the frequency and details of legislative lobbyists' and lobbyist's principals' reports, and prohibiting a legislator from lobbying during the six months following the end of that legislator's service. The act also creates laws governing executive branch lobbying which are similar to the legislative lobbying laws. The act does all of the following:

- Includes lobbying the Governor in relation to the Governor's veto as part of the definition of legislative lobbying.
- Includes developing goodwill as part of the definition of lobbying, thereby closing the "goodwill loophole."
- Permits gifts from lobbyists to their family members who are legislators or legislative employees. Also exempts lawful campaign contributions.
- Defines "expenditure" to include anything of value over $10.
- Subjects expenditures by legislative liaison personnel and State agencies to the same reporting requirements as expenditures by other lobbyists.
- Amends the registration period for a lobbyist to one year, rather than the previous two-year cycle.
- Increases the frequency of expenditure reports to monthly when the General Assembly is in session, quarterly thereafter.
- Increases the details of lobbying expenditure reports to include the amount, date, a description of the expenditure, name and address of the payee, and name of any covered person benefiting from the expenditure (or legislative employee or those person's immediate family members) in each of the following categories:
  - Transportation and lodging.
  - Entertainment, food, and beverages.
  - Meetings and events.

- Gifts.
- Other expenditures.

- Allows a lobbyist to elect to report the approximate number of covered persons benefiting and, with particularity, the basis for their selection if more than 15 covered persons benefit from the expenditure. The approximate number of legislative employees and immediate family members must be reported separately.
- Requires lobbyist's principal to report, in addition to the expenditures reported by the lobbyist, the compensation paid or agreed to be paid to each lobbyist.
- Prohibits all of the following:
  - A legislator or former legislator from being employed as a legislative or executive branch lobbyist within six months of the end of that legislator's service.
  - The Governor or Council of State member or head of a cabinet department from being employed as a legislative or executive branch lobbyist within six months after separation from employment or leaving office.
  - A lobbyist from serving as a campaign treasurer for a legislative campaign.
  - A lobbyist from being appointed to a body created under State law with regulatory authority over the activities of a person that the lobbyist represented within 60 days of end of that representation.
  - A lobbyist from allowing a covered person, legislative employee, or that person's immediate family member to use the lobbyist's cash or credit for the purpose of lobbying without the lobbyist being present at the time of the expenditure.
- Requires expenditures of $200 or more made for the purpose of lobbying from persons not required to register and report as lobbyists or lobbyist's principals to be reported. If the person giving the gift is in North Carolina, that person must make the report. If the person giving the gift is outside North Carolina, the person accepting the gift must make the report. Certain exceptions apply.
- Requires scholarships valued over $200 to be reported.
- Allows for a civil fine up to $5,000 per violation in addition to any criminal penalties.

The regulation of executive branch lobbying is similar to the regulation of legislative lobbying with the following differences:

- Lobbying is defined as the influencing of "executive action" which is defined as being the consideration of a rule, regulation, executive order, policy, resolution, contract, request for proposal, nomination or appointment by the Governor, member of the Council of State, heads of the cabinet, and the Board of Governors and university presidents.
- Executive branch lobbying does **not** include action by an attorney.
- Lobbyist and lobbyist's principals' reports are due every six months.
- Prohibits the Governor or a member of the Council of State from acting as a legislative or executive branch lobbyist during the time of the biennial legislative session in which the person served in office.

The act also requires the Secretary of State to create a "No Gifts" registry.

This act becomes effective January 1, 2007. (EC)

Manufacturing Redevelopment Districts

S.L. 2005-462 (SB 629) establishes a process for the creation of manufacturing redevelopment districts (redevelopment districts). The act contains legislative findings regarding the need for redevelopment districts. These include that the economic development of the State will be served by providing an opportunity to restart production in manufacturing facilities to meet the needs of a new industry thereby creating and preserving jobs, that economically distressed counties continue to lose jobs and the General Assembly must act to create new jobs for citizens in those counties, that the health and safety of North Carolina citizens will be served through the assessment and remediation of known and unknown environmental conditions at

manufacturing facilities, that the public interest will be served by the State securing an interest in property located within significant State property and by providing an interest sufficient to allow the new operator to restart a manufacturing facility and provide new jobs. Finally, the act finds that the public interest will be served by encouraging a former owner to transfer ownership in order to make it possible for new operators to restart production at the facilities.

The act provides that a redevelopment district exists to provide manufacturing, research and development, and related service and support jobs to citizens of the State while ensuring the remediation of known and unknown environmental conditions at manufacturing facilities.

A process is set out for establishing a redevelopment district. The district is created when the new operator certifies to the Secretary of State that the district meets all of the criteria specified in the act. The criteria include the following:

- The real property is located in a county that is economically distressed, meaning the average weekly wage in the county is less than $525/week, the unemployment rate is greater than 6%, and more than 9% of the citizens are at or below the federal poverty level.
- All of the real property of the district is privately owned in-holding of 50 acres or more within a State forest of 10,000 acres or more.
- The district contains a manufacturing facility that has been out of production for two years or more.
- Failure to restart the facility would result in a permanent lost opportunity to create 50 or more jobs.
- The manufacturing facility has a total of 500 square feet or more.
- The new operator guarantees investment of at least $5 million or more and intends to employ 50 or more workers.
- The new operator accepts responsibility for the assessment and remediation of known and unknown environmental conditions under applicable laws and rules and agrees to remove all buildings when the operator ceases manufacturing operations.
- The new operator provides financial assurance, acceptable to the Department of Environment and Natural Resources for the remediation of environmental conditions, including a prefunded escrow account in an amount not less than $5 million.
- The owner has entered into an agreement to transfer the real property to a local government entity and the local government entity has agreed to transfer the property to the new operator. The new operator must agree, upon cessation of manufacturing operations, to demolish and remove all buildings and transfer title to the State of North Carolina.

The act grants immunity to any person who owned or had an interest in any real property within a redevelopment district at any time prior to the establishment of the district. The immunity is for liability to any private or third party for civil claims arising out of the presence of oil or any other hazardous substance or waste on the property if the cause of action arose after transfer of the property. The immunity would be with regard to any theory of liability including negligence, nuisance, or trespass, or any other liability arising under common law and liability arising under any State statute including Article 9 of Chapter 130A (Solid Waste Management), or Articles 21 (Clean Air and Water) and 21A (Oil and Hazardous Substances) of Chapter 143 of the General Statutes. The act would not be construed to prevent the State from enforcing remediation standards, monitoring, or compliance requirements required by the Environmental Protection Agency to be enforced by the State as a condition to receiving or retaining federal funds or program approval. The new operator is liable for all claims that the former owner would have been liable for and to the same extent as the former owner of the redevelopment district.

Upon cessation of operations, the owner must transfer title to the State and the act directs the State Property Office to accept the donation by the owner of the real property. Upon accepting the donation, the manufacturing district is terminated.

This act became effective October 3, 2005. (TH)

Technology

Ban Internet Hunting

S.L. 2005-62 (HB 772). See **Agriculture and Wildlife**.

Government Electronic Commerce/Approval of Fees

S.L. 2005-92 (HB 676) changes the authority for the approval of fees charged by public agencies to cover the agency's costs of permitting a transaction to be completed electronically, by substituting the Office of State Budget and Management for the State Chief Information Officer. The Office of State Budget and Management is directed to consult with the State Chief Information Officer. Prior consultation with the Joint Legislative Commission on Governmental Operations is also still required.

This act became effective June 21, 2005. (WR)

Child Exploitation Prevention Act

S.L. 2005-121 (SB 472). See **Criminal Law and Procedure**.

Electronic Purchases and Sales

S.L. 2005-227 (HB 1332). See **Local Government**.

Studies

Legislative Research Commission

Zero-Base Budget Review

S.L. 2005-276, Sec. 6.34 (SB 622, Sec. 6.34) authorizes the Legislative Services Commission to undertake no more that two zero-base budget reviews of two departments selected for review by the Speaker of the House and the President Pro Tempore of the Senate prior to the convening of the 2007 General Assembly. In conducting the reviews, the Commission is authorized to consider the following:

- The activities that comprise the department's budget and a justification for the existence of each activity.
- A quantitative estimate of any adverse impacts that could reasonably be expected should the activity be discontinued.
- The account of expenditures that would be required to maintain the activity at the minimum level of service required by law.
- An itemized account of expenditures required to maintain the activity at current levels of service, together with a concise statement of the quantity and quality of services being provided.
- A ranking of all activities of the department that shows the relative contribution of each activity to the overall goals and purposes of the agency at current service levels.

This section became effective July 1, 2005. (WR)

New/Independent Studies/Commissions

Extend Deadline for Master Plan

S.L. 2005-7 (HB 857) extends the date by which the State Property Office must submit a Master Plan for the use of the Dorothea Dix property to the Dorothea Dix Hospital Property Study Commission from April 1, 2005 until September 1, 2005. In 2003, the State Property Office, in consultation with the City of Raleigh, was directed to develop a Master Plan for the Dorothea Dix Campus and to submit the Plan to the Study Commission. The Commission was directed to review the Plan and make recommendations to the 2005 General Assembly. This act also extends the Commission's reporting deadline to the 2006 Session.

This act became effective April 7, 2005. (KCB)

Extend Job Development Investment Program and Bill Lee Act

S.L. 2005-241, Secs. 7 and 8 (HB 1004, Secs. 7 and 8) create an Economic Development Oversight Committee. The Committee is a standing committee and consists of 12 members: 6 appointed by the Speaker of the House of Representatives and 6 appointed by the President Pro Tempore of the Senate. The Committee is tasked with studying the budgets, programs, and policies of various State, regional, and local entities involved with economic development, analyzing legislation from other states regarding economic development, and analyzing proposals of the Economic Development Board. Before the 2006 Regular Session, the Committee must complete a comprehensive study of the Bill Lee Act and the Job Development Investment Program (JDIG). The Committee is required to hold at least one joint meeting with the Revenue Laws Study Committee before issuing a report on this issue. The act specifically states the intent of the General Assembly to replace the Bill Lee Act and to make changes to JDIG based on the recommendations of the Committee.

The act also makes changes to the Bell Lee Act.

These sections became effective June 29, 2005. For additional information, see **Finance**. (TH)

Referrals to Existing Commissions/Committees

Procurement of Professional Services by Reverse Auction Study

S.L. 2005-370, Sec. 3 (HB 576, Sec. 3) directs the Joint Legislative Economic Development Oversight Committee to study the use of reverse auctions for the procurement of professional construction services by businesses that receive economic development incentives from the State or a local government and whether incentives should be contingent upon a business's commitment not to use a reverse auction procurement process. The Committee is to report to the General Assembly prior to the convening of the 2006 Regular Session of the 2005 General Assembly.

This section became effective September 8, 2005. (WR)

Referrals to Departments, Agencies, Etc.

Department of Transportation Report/Federal Rail Assistance to North Carolina

S.L. 2005-222 (HB 1280). See **Transportation**.

Overhead Cost Recovery

S.L. 2005-276, Sec. 6.6 (SB 622, Sec. 6.6) directs the Office of State Budget and Management to study the allocation of overhead costs and propose an overhead cost recovery program for consideration by the General Assembly. In conducting the study, the Office of State Budget and Management must (1) determine a methodology for the calculation and allocation of overhead costs; (2) ensure the reversion of overhead cost reimbursement for each program whose overhead costs are borne by the General Fund and also receive overhead cost reimbursement from federal or non General Fund sources; (3) establish an indirect cost allocation methodology to reimburse the General Fund for overhead costs for those programs that do not have other sources to cover overhead costs; and (4) estimate the anticipated reimbursement to the General Fund.

The Office of State Budget and Management must report its recommendations to the Chairs of the Senate Committee on Appropriations/Base Budget and the House Committee on Appropriations and the Fiscal Research Division by April 1, 2006. The overhead cost recovery recommendations must not apply to overhead cost reimbursements collected under any grant agreement by The University of North Carolina or its affiliated institutions.

This section became effective July 1, 2005. (BR)

Planning for Better Collection of Infrastructure Information

S.L. 2005-276, Sec. 6.33 (SB 622, Sec. 6.33) directs the Office of State Budget and Management to conduct a study to determine the best methods for collecting and managing information about technology, water, sewer, and other modern infrastructures needed to assist communities in becoming and remaining economically viable. The Office of State Budget and Management is to report to the 2006 Regular Session of the 2005 General Assembly.

This section became effective July 1, 2005. (WR)

Study Consolidation of State Laboratories

S.L. 2005-276, Sec. 6.36 (SB 622, Sec. 6.36), as amended by S.L. 2005-345, Sec. 4 (HB 320, Sec. 4) directs the Office of State Budget and Management (OSBM) to hire a private consultant to study the feasibility of and develop a plan to consolidate State-funded laboratories. The section directs the Office of State Budget and Management to use up to $250,000 of funds available to hire an independent consultant to conduct the study. The laboratories to be considered for consolidation include the Public Health State Laboratory, the Agricultural Laboratory, and the State Bureau of Investigation Crime Laboratories. The plan must include a cost analysis for consolidating facilities, assure that confidentiality of data is not compromised, and that the chain of evidence is maintained for forensic evidence. It also must include recommendations regarding whether to privatize laboratory functions that can be more efficiently performed by non-State entities. OSBM must report its findings and recommendations to the General Assembly and the Fiscal Research Division no later than May 1, 2006.

This section became effective July 1, 2005. (KG)

Reports on Personal Services Contracts

S.L. 2005-276, Sec. 6.38 (SB 622, Sec. 6.38) directs each State department, agency and institution to report each year to the Office of State Personnel on its utilization of personal services contracts that have an annual expenditure of greater than $5,000. This section requires the report to include the budget code, budget number, and expenditure account number from which the contract funds were disbursed.

This section became effective July 1, 2005. (GSP)

Study of Advocacy Programs

S.L. 2005-276, Sec. 19.1 (SB 622, Sec. 19.1) authorizes the Secretary of Administration to continue a study of the advocacy programs housed in the Department of Administration (Department). The study must include advocacy and service functions of the Division of Veteran Affairs, the Council for Women, the Domestic Violence Commission, the Commission of Indian Affairs, the Governor's Advocacy Council for Persons with Disabilities, the Human Relations Commission, and the Youth Advocacy and Involvement Office. The Department is directed to consider the use of non-profit organizations in providing advocacy services.

The Secretary must report findings and recommendations from the study to the Joint Legislative Commission on Governmental Operations and the chairs of the Senate and House Appropriations Committees by April 1, 2006.

This section became effective July 1, 2005. (TH)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 23
Transportation

Brenda Carter (BC), Giles S. Perry (GSP), Wendy Graf Ray (WGR), and Susan Sitze (SS)

Enacted Legislation

Department of Transportation

Crime to Falsify Highway Inspection Reports

S.L. 2005-96 (HB 664). See **Criminal Law and Procedure**.

Ferry Boat Operator Training Feasibility Study

S.L. 2005-276, Sec. 8.7 (SB 622, Sec. 8.7). See **Education.**

Remove Governmental Operations Consultation on Federal-Aid Acts

S.L. 2005-276, Sec. 28.1 (SB 622, Sec. 28.1) removes a requirement that the Department of Transportation consult the Joint Legislative Commission on Governmental Operations before funding a federally eligible construction project entirely with State Funds, and substitutes a requirement of a report to the Commission on these projects.

This section became effective July 1, 2005. (GSP)

Use of Excess Overweight/Oversize Fees

S.L. 2005-276, Sec. 28.5 (SB 622, Sec. 28.5) requires the Department of Transportation to use funds generated by overweight and oversize vehicle permit fees that are in excess of the cost of administering the program for highway and bridge maintenance required as a result of damage caused by overweight or oversized vehicle loads.

This section became effective July 1, 2005. (GSP)

Analysis and Approval of Rules, Policies, or Guidelines Affecting Department of Transportation Projects

S.L. 2005-276, Sec. 28.8 (SB 622, Sec. 28.8) requires the Department of Transportation (Department) to conduct an analysis of any proposed environmental policy or guideline adopted by the Department to determine if it will result in increased cost to Department projects. In addition, this section requires any agency adopting a rule affecting environmental permitting of Department projects to conduct an analysis to determine if it will result in an increased cost to the Department, and authorizes the Department to comment on and submit an objection to the proposed rule.

This section became effective July 1, 2005. (GSP)

Department of Transportation Productivity Pilot Programs

S.L. 2005-276, Sec. 28.9 (SB 622, Sec. 28.9) authorizes the Department of Transportation to continue productivity pilot programs in the road oil and bridge inspection units, and to establish two additional pilot programs to test incentive pay for employees as a means of increasing and maintaining efficiency and productivity. One of the new pilot programs will involve the Pavement Markings Unit; the other pilot program will be selected by the Department. Up to .50% of the budget allocation for these programs may be used to provide employee incentive payments. Incentive payments are to be based on quantifiable measures and production schedules determined prior to the implementation of the pilot programs. Pilot programs are limited to two years.

This section became effective July 1, 2005. (BC)

Department of Transportation Reorganization

S.L. 2005-276, Sec. 28.11 (SB 622, Sec. 28.11) directs the Secretary of Transportation to transfer the Department of Transportation's Program Development branch from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the Chief Financial Officer of the Department of Transportation (Department). It also requires the Secretary to transfer the Transportation Planning branch and the Project Development and Environmental Analysis branch from the Deputy Secretary for Environmental, Planning and Local Government Affairs to the State Highway Administrator. In fiscal year 2005-2006, the Department is authorized to fill up to 196 existing or vacant positions in the Project Development and Environmental Analysis branch. The Department is required to study the current labor market and to make competitive salary offers to prospective employees for specialized positions within the Project Development and Environmental Analysis branch and make salary adjustments for current employees that are in positions that are difficult to fill within the Project Development and Environmental Analysis branch. The Department is directed to develop an incentive pay pilot program for employees of the Project Development and Environmental Analysis branch. This program is to utilize incentive pay as a means to recognize and reward increased efficiency and productivity. The Department is required to report to the Joint Legislative Transportation Oversight Committee on the incentive pay pilot program no later than March 30, 2006.

This section became effective July 1, 2005. (BC)

Department of Transportation Authority to Provide Way-Finding Signs for the Roanoke Voyages Corridor Commission and the Blue Ridge National Heritage Area Partnership

S.L. 2005-276, Sec. 28.14 (SB 622, Sec. 28.14) authorizes the Department of Transportation (Department), at the request of the Roanoke Voyages Corridor Commission, to manufacture and install directional signs on Roanoke Island and up to 30 miles off the island. Although the signs are not required to comply with normal transportation signage standards, the Department may not erect any signage that would be impracticable, unfeasible, or that would result in an unsafe or hazardous condition. The Department of Transportation may also install non-standard way-finding signs within the Blue Ridge National Heritage Area at the request of the Blue Ridge National Heritage Area Partnership.

This section became effective July 1, 2005. (BC)

Department of Transportation Fee Increases

S.L. 2005-276, Sec. 44.1 (SB 622, Sec. 44.1) changes the amounts of fees and penalties collected by the Department of Transportation as follows:

- Regular drivers license:
  - Class A – from $4.30/year to $4.00/year.
  - Class B – from $4.30/year to $4.00/year.
  - Class C – from $3.05/year to $4.00/year.
- Restoration of drivers license:
  - Following revocation (except for impaired driving) – from $25.00 to $50.00.
  - Following revocation for impaired driving before the total amount of money deposited in the General Fund from these fees exceeds $10 million – from $50.00 to $75.00.
  - Following revocation for impaired driving after the total amount of money deposited in the General Fund from these fees exceeds $10 million – from $25.00 to $50.00.
- Learner's Permit – from $10.00 to $15.00.
- Limited learner's permit or limited provisional license – from $10.00 to $15.00.
- Duplicate license – from $10.05 to $10.00.
- Driver improvement clinics – from $25.00 to $50.00.
- Copies of Division of Motor Vehicles license records:
  - Limited extract copy of license record – from $5.00 to $8.00.
  - Complete extract copy of license record – from $5.00 to $8.00.
  - Certified true copy of complete license record – from $7.00 to $11.00.
- Application for commercial drivers license – from $20.00 to $30.00.
- Commercial drivers license – from $10.00/year to $15.00/year.
- Commercial drivers license endorsement – from $1.25/year to $3.00/year.
- Certified copies of Division of Motor Vehicles documents:
  - Documents other than accident reports – from $5.00 to $10.00.
  - Accident reports – from $4.00 to $5.00.
- Temporary license plate – from $3.00 to $5.00.
- Failure to apply for certificate of title within the required time – from $10.00 to $15.00.
- Application for certificate of title – from $35.00 to $39.00.
- Application for duplicate or corrected certificate of title – from $10.00 to $14.00.
- Application of repossessor for certificate of title – from $10.00 to $14.00.
- Transfer of registration – from $10.00 to $15.00.
- Replacement registration plates – from $10.00 to $15.00.
- Application for duplicate registration card – from $10.00 to $15.00.
- Application for recording supplementary lien – from $10.00 to $14.00.
- Application for removing lien from certificate of title – from $10.00 to $14.00.
- Application for certificate of title transferred to a manufacturer or retailer for purpose of resale – from $10.00 to $14.00.
- Application for salvage certificate of title made by insurer – from $10.00 to $15.00.
- One-day title service – from $50.00 to $75.00.
- Registration fees for passenger vehicles:
  - U-drive-it automobiles – from $41.00 to $51.00.
  - U-drive-it buses – from $1.40/hundred pounds of empty weight to $2.00/ hundred pounds of empty weight.
  - Private passenger vehicles, 15 passengers or less – from $20.00 to $28.00.
  - Private passenger vehicles over 15 passengers – from $23.00 to $31.00.
  - Motorcycle – from $9.00 to $15.00.

- Motorcycle equipped with device to transport persons or property – from $16.00 to $22.00.
- House trailers – from $7.00 to $11.00.

➢ Minimum registration fees for property-hauling vehicles:
- Farmer rate – from $17.50 to $24.00.
- General rate – from $21.50 to $28.00.

➢ Registration fees for property-hauling vehicles per hundred pounds gross weight – farmer rate:
- Not over 4,000 pounds – from $0.23 to $0.29.
- 4,001 to 9,000 pounds – from $0.29 to $0.40.
- 9,001 to 13,000 pounds – from $0.37 to $0.50.
- 13,001 to 17,000 pounds – from $0.51 to $0.68.
- Over 17,000 pounds – from $0.58 to $0.77.

➢ Registration fees for property-hauling vehicles per hundred pounds gross weight – general rate:
- Not over 4,000 pounds – from $0.46 to $0.59.
- 4,001 to 9,000 pounds – from $0.63 to $0.81.
- 9,001 to 13,000 pounds – from $0.78 to $1.00.
- 13,001 to 17,000 pounds – from $1.06 to $1.36.
- Over 17,000 pounds – from $1.20 to $1.54.

➢ Registration fee for semitrailers or trailers – from $10.00 to $19.00.

➢ License fees under Motor Vehicle Dealers and Manufacturers Licensing Law:
- Dealers, distributors, distributor branches, and wholesalers – from $50.00 to $70.00 for each place of business.
- Manufacturers – from $100.00 to $150.00, and for each factory branch from $70.00 to $100.00.
- Sales representatives – from $10.00 to $15.00.
- Factory representatives or distributor representatives – from $10.00 to $15.00.

➢ Motor carrier registration and insurance verification:
- Application by intrastate motor carrier for certificate of exemption – from $25.00 to $45.00.
- Certification by interstate motor carrier that it is not regulated by the United States Department of Transportation – from $25.00 to $45.00.
- Application by interstate motor carrier for emergency permit – from $10.00 to $18.00.

➢ Portion of drivers license and duplicate license fees to be used for online Organ Donor Internet site and License to Give Trust Fund – from unspecified amount to $0.05/license issued.

➢ Replacement license with new employer name for sales, factory, and distributor representatives who change employers – from half of the statutorily set licensing fee to $10.00.

This section became effective October 1, 2005, and applies to fees collected on or after that date. (WGR)

Utilities Access to Public Rights-Of-Way

S.L. 2005-286 (HB 1469). See **Utilities**.

Prohibiting Solicitation on State Highways

S.L. 2005-310 (HB 813). See **Local Government**.

DOT Relocation Assistance Change

S.L. 2005-331 (HB 1266). See **Property, Trusts, and Estates.**

Defining State Roads

S.L. 2005-382 (HB 747) eliminates the State budget designation for "urban" system roads. It requires each highway division and each municipality under contract with the Department of Transportation to prepare a work plan for maintenance of State streets and highways within municipalities that is consistent with the needs reported in the biennial State road maintenance report. It requires the Department to implement all reasonable measures to expedite completion of environmental reviews for the Herbert C. Bonner replacement bridge and contract with a firm to design and build the bridge within 90 days of receiving an approved record of decision from the Federal Highway Administration.

This act became effective September 13, 2005. (GSP)

GARVEE Bond Issuance

S.L. 2005-403 (HB 254) directs the Secretary of Transportation and the State Treasurer to form a committee to plan for implementation of the act by addressing all financial, legal and practical issues involved in issuing GARVEE bonds, and submit a report to the co-chairs of the Transportation Appropriations Subcommittee, and the co-chairs of the Joint Legislative Transportation Oversight Committee by December 1, 2005. GARVEE bonds are Grant Anticipation Revenue Vehicles, authorized by federal law, that use anticipated future federal highway funds to finance highway project construction.

Effective February 1, 2006, the act also authorizes the Department of Transportation to issue GARVEE bonds or other eligible debt financing instruments to finance Federal-aid highway projects. The act specifies that GARVEE bonds do not constitute a debt or liability of the State, or a pledge of the full faith and credit of the State or its subdivisions, but must be payable solely from the federal funds pledged. The act provides that GARVEE bond revenues must be distributed in accordance with the provisions of the distribution formula found in G.S. 136-17.2.

This act became effective September 20, 2005. (GSP)

Secondary Road Construction

S.L. 2005-404 (HB 750) changes how the Department of Transportation (Department) secondary road study is conducted each year to require the Department to determine the number of unpaved State road miles in each county and statewide that are eligible and ineligible for paving, and the total number of miles in each county and statewide that are paved. The act defines the secondary roads "ineligible" to be paved as unpaved State roads for which right-of-way or environmental permits cannot be obtained, defines eligible unpaved mileage as the number of miles of unpaved roads that have not been previously approved for paving by any funding source or have the potential to be programmed for paving when rights-of-way or environmental permits are secured.

The act provides that the first $68.670 million allocated from the Highway Fund to secondary road improvement must be allocated to counties based on a percentage of funds determined as a factor of the number of paved and unpaid miles of State-maintained secondary roads in the county divided by the total number of miles of unpaved State secondary roads, excluding those unpaved secondary road miles that are eligible to be paved. The act provides that funds from the Highway Fund for improving secondary roads in excess of the first $68.670 million must be allocated to each county based on a percentage proportion that the miles of unpaved State secondary roads in the county bears to the total number of unpaved State

secondary road miles. The act eliminates a restriction to roads with at least 50 vehicles per day; provides that in any county that has no eligible unpaved State secondary road miles; the funds may be used to improve paved and unpaved secondary roads; and provides that beginning in 2010, the Highway Fund secondary road allocation is to be based on the miles of secondary roads in a county in proportion to the total State-maintained secondary road mileage.

In addition, the act changes the Highway Trust Fund supplement for secondary roads to authorize use of the funds on all unpaved State secondary roads and provides that allocations of these funds shall be based on the percentage proportion of the number of miles in the county of State-maintained unpaved secondary roads that are eligible to be paved bears to the total number of miles in the State of State-maintained unpaved secondary roads that are eligible to be paved. It provides a $5 million set aside for ineligible secondary mileage that becomes eligible, effective 2006-2010 and provides that beginning in 2010, the Highway Trust Fund secondary road allocation is to be based on the miles of secondary roads in a county in proportion to the total State-maintained secondary road mileage.

This act becomes effective July 1, 2006. (GSP)

License Plates

Various Special License Plates

S.L. 2005-216 (HB 85) authorizes the Division of Motor Vehicles (Division) to issue the following special registration plates: Air Medal Recipient, Alpha Phi Alpha Fraternity, ARC of North Carolina, Autism Society of North Carolina, Buddy Pelletier Surfing Foundation, Coastal Conservation Association, Cold War Veteran, Corvette Club, Guilford Battleground Company, Marine Corps League, National Multiple Sclerosis Society, National Wild Turkey Federation, North Carolina Trout Unlimited, North Carolina Aquarium Society, North Carolina Libraries, North Carolina Museum of Natural Sciences, North Carolina Wildlife Habitat Foundation, Operation Enduring Freedom, Operation Iraqi Freedom, SCUBA, Shag Dancing, Share the Road, Tarheel Classic Thunderbird Club, First in Forestry, and Watermelon. The act specifies fees for issuance of the special plates, and provides for the distribution of those fees. Most of the plates are subject to a requirement that the Division receive 300 or more applications before the plate may be developed.

This act became effective on July 20, 2005. (BC)

Visitor Center Funds

S.L. 2005-276, Sec. 28.16, as amended by S.L. 2005-345, Sec. 38 (SB 622, Sec. 28.16, as amended by HB 320, Sec. 38) increases the annual appropriation from the Special Registration Plate Account to provide $100,000 for operating assistance for a Visitor Center on Staton Road in Transylvania County, and provides that the funds may be used for capital improvements during the 2005-2007 biennium.

This section became effective July 1, 2005. (BC)

Motor Vehicle Law

Motor Vehicle Dealer Technical Corrections

S.L. 2005-99 (HB 786). See **Commercial Law and Consumer Protection**.

Evidence/Speed-Measuring Instruments

S.L. 2005-137 (HB 821). See **Criminal Law and Procedure**.

Restrict Use of Blue and Red Vehicle Lights

S.L. 2005-152 (HB 355) expands the current restriction on the use of red and blue lights to prohibit the installation and use of forward facing red or blue lights, installed on a vehicle after initial manufacture. Violation of this act would constitute a Class 1 misdemeanor.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (GSP)

Failure to Return Hired Motor Vehicles

S.L. 2005-182, Secs. 4 and 5 (HB 1392, Secs. 4 and 5) amend the law as it pertains to reporting of stolen and recovered vehicles and failure to return hired motor vehicles. The sections delete the requirement that law enforcement report thefts and recoveries of motor vehicles to the Division of Motor Vehicles "immediately." While the statute still requires the report to be made, the timing is left within the discretion of the law enforcement officer.

The sections provide that law enforcement, upon receiving a vehicle theft report or other reliable information that a hired motor vehicle has not been returned, must report the failure to the National Crime Information Center. Law enforcement is also required to report the recovery of those vehicles and to attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the number is readily accessible.

These sections become effective December 1, 2005, and apply to offenses committed on or after that date. (WGR)

Motor Vehicle Move-Over Law Changes

S.L. 2005-189 (HB 288) amends North Carolina's Move-Over Law, which requires a driver of a motor vehicle to pull over into the far lane when passing an authorized emergency vehicle that is stopped within 12 feet of the roadway. If there is only one lane for traffic traveling in the direction of the approaching vehicle, or if the vehicle cannot move over safely, then the vehicle is required to slow down until it is clear of the emergency vehicle. It also prohibits following, parking near, or blocking any fire apparatus, and parking near emergency vehicles at an accident scene. Violation is currently an infraction punishable by a fine up to $100. The law also requires a driver to pull over and stop when approached by an emergency vehicle, and violation of that provision is a Class 2 misdemeanor.

This act amends the law by adding "public service vehicles" to the list of vehicles for which drivers must move into a far lane, or slow down while passing, when they are stopped on the side of a roadway. "Public service vehicle" is defined as a vehicle that has been called to the scene by a motorist or law enforcement officer, is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is equipped with an amber-colored flashing light. In addition, the act increases the fines for committing any of the infractions under the Move-Over Law. Instead of a maximum $100 fine, a violator will be subject to a $250 fine. A violator will also be subject to enhanced penalties when any provision of the Move-Over Law is violated and it results in damage to property or injury or death. A person who causes damage to property in excess of $500 or causes injury to an emergency response person will be guilty of a Class 1 misdemeanor, and a person who causes serious injury or death to an emergency response person will be guilty of a Class I felony and may have his or her drivers license suspended for up to 6 months.

This act becomes effective July 1, 2006, and applies to offenses committed on or after that date. (WGR)

School Bus Safety Act

S.L. 2005-204 (HB 1400) makes it clear that a driver must bring a vehicle to a full stop and must remain stopped until the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has started to move. The penalty for violation of the law is increased to a Class 1 misdemeanor; any person who violates the statute and willfully strikes and causes serious bodily injury to a person is guilty of a Class I felony.

This act became effective September 1, 2005, and applies to offenses committed on or after that date. (BC)

Wreckers/Travel Mileage

S.L. 2005-248 (SB 832) exempts wreckers from highway weight and size limitations so that they may tow disabled vehicles up to 50 miles from the place of disablement. Prior to enactment of this act, the law exempted wreckers, in an emergency, from weight and size limitations while operating on State highways. However, a wrecker was only authorized to tow a disabled vehicle to the "nearest feasible point" for parking or storage. This act amends the law to allow a wrecker, under any circumstance, to tow any disabled vehicle or combination of vehicles up to 50 miles from the point that the vehicle was disabled for repairs, parking, or storage. It also allows a wrecker to tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle.

This act became effective August 4, 2005. (WGR)

Private Plates on Publicly Owned Motor Vehicles

S.L. 2005-276, Sec. 6.18 (SB 622, Sec. 6.18) repeals a provision that removed the authorization for use of private license plates on publicly owned or leased vehicles used to transport, arrest, or apprehend persons charged with violations of law.

This section became effective April 30, 2005. (GSP)

All-Terrain Vehicle Regulation

S.L. 2005-282 (SB 189). See **Children and Families**.

Motor Vehicle Repairs/Clarify Cost of Repair

S.L. 2005-304 (HB 1299). See **Commercial Law and Consumer Protection.**

Speeding to Elude Arrest

S.L. 2005-341 (HB 1279). See **Criminal Law and Procedure**.

Seizure of Documents and Plates

S.L. 2005-357 (HB 1404) amends the motor vehicle law concerning the seizure of documents and plates to authorize any sworn law enforcement officer to seize any certificate of

title, registration card, permit, license, or registration plate that has been revoked or cancelled by the Division of Motor Vehicles.

This act becomes effective December 1, 2005. (BC)

Oversize/Overweight Vehicle Changes

S.L. 2005-361 (HB 669) makes changes to statutes pertaining to oversize and overweight vehicles. The Department of Transportation is authorized to issue special permits to applicants operating vehicles upon North Carolina highways that exceed the statutory size and weight limits. The act authorizes law enforcement officers to seize and detain property-hauling vehicles that are operating in violation of permit requirements, and allows them to detain those vehicles until applicable penalties are paid.

The act clarifies that civil penalties assessed for violation of special permit conditions may also be assessed when a permit is required but not obtained. The act also makes penalties that apply to violation of statutory weight limits applicable to violation of special permit conditions, in addition to penalties specifically authorized for violation of special permit conditions, but it limits the total penalty to a maximum of $25,000.

The act also specifies that a load may not extend more than 14 feet from the end of the bed or body of a vehicle, with the exception of vehicles transporting forestry products or utility poles.

This act became effective October 1, 2005. (WGR)

Clarify Motor Vehicle Dealer Franchise Laws

S.L. 2005-409 (HB 1527). See **Commercial Law and Consumer Protection.**

New Motor Vehicles Warranties

S.L. 2005-436 (HB 1295). See **Commercial Law and Consumer Protection.**

Driving From/Leaving Scene of Accident

S.L. 2005-460 (HB 217) makes it unlawful to drive away from or otherwise leave the scene of a motor vehicle accident in certain circumstances.

The act prohibits the driver of a motor vehicle involved in an accident from facilitating, allowing, or agreeing to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove himself or herself or others from significant risk of injury until the accident investigation has been completed by a law enforcement officer, or the law enforcement officer has given permission to leave.

Violation of this prohibition is a Class H felony if the driver knows, or reasonably should know, that he or she has been involved in an accident and that the accident has resulted in injury or death to any person. Violation of this prohibition is a Class 1 misdemeanor if the driver knows, or reasonably should know, that he or she has been involved in an accident and the accident has resulted only in damage to property, or if the accident resulted in injury or death to a person but the driver did not know or have reason to know of the death or injury.

The act prohibits a passenger of any vehicle who knows or reasonably should know that the vehicle in which he or she is a passenger is involved in an accident from willfully facilitating, allowing or agreeing to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment, or to remove himself or herself or others from significant risk of injury until the accident investigation

has been completed by a law enforcement officer, or the law enforcement officer has given permission to leave.

A willful violation of this prohibition is a Class H felony if the passenger knows, or reasonably should know, that he or she has been involved in an accident and that the accident has resulted in injury or death to any person. A willful violation of this prohibition is a Class 1 misdemeanor if the passenger knows, or reasonably should know, that he or she has been involved in an accident and the accident has resulted only in damage to property, or if the accident resulted in injury or death to a person but the driver did not know or have reason to know of the death or injury.

The act requires a passenger to give his or her name, address, drivers license number, and the license plate number of the vehicle in which the passenger was riding, if possible, to the person struck or the driver or occupants of any vehicle collided with, provided the person is physically and mentally capable of receiving the information. The passenger is also required to render reasonable assistance to any injured person, including calling for medical assistance if necessary or requested by the injured person. Violation of this requirement is a Class 1 misdemeanor.

This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. (SS)

Motor Vehicle Repair and Franchise Changes

S.L. 2005-463 (HB 1227). See **Commercial Law and Consumer Protection**.

Public Transportation and Rail

Transit Drug Testing

S.L. 2005-156 (HB 740) requires employers to report any positive drug tests of truck drivers and transit employees to the Division of Motor Vehicles (Division) within five business days. The notification must include the driver's name, address, drivers license number, social security number, and the drug or alcohol test results.

The act requires the Division, upon receipt of notice of a federally required positive drug or alcohol test result, to disqualify the driver from operating a commercial motor vehicle. The disqualification is in place until receipt of proof of successful completion of assessment and treatment by a qualified substance abuse professional, in accordance with federal regulations.

The act requires the Division, upon receipt of a notice of a federally required positive drug or alcohol test result, to place a notation of disqualification to operate a commercial motor vehicle on the driving record of the person, and retain the notation for two years following the end of any disqualification.

The act requires the Division to notify any person disqualified from operating a commercial motor vehicle of the disqualification, and the driver's right to a hearing if requested within 20 days; provides that if the driver requests a hearing, the disqualification would be stayed pending the outcome of the hearing; provides that the hearing would be conducted by a Division hearing officer in Raleigh, and limited to the issues of testing procedure and protocol; provides that a copy of the positive test result accompanied by certification by the testing officer will be prima facie evidence of a confirmed positive test result; and provides that the decision of the Division hearing officer may be appealed to Superior Court.

This act becomes effective December 1, 2005. (GSP)

State Use of North Carolina Railroad Dividends

S.L. 2005-276, Sec. 28.7 (SB 622, Sec. 28.7) specifies that dividends of the North Carolina Railroad Company may be used for improvements to the property of the North Carolina Railroad Company for railroad and industrial track rehabilitation, railroad signal and grade crossing protection, bridge improvements, corridor protection, and industrial site acquisition.

This section became effective July 1, 2005. (GSP)

Enhance Passenger Tramway Safety Act

S.L. 2005-347 (HB 766) amends the Passenger Tramway Safety Act, which sets out the authority for the Commissioner of Labor to register passenger tramways, to establish reasonable standards of design and operational practices, and to make inspections of the devices. The act broadens the definition of "passenger tramway" to include transportation by conveyor belt, and makes it clear that no person may operate a tramway without a valid registration certificate. The act expands the powers and duties of the Commissioner of Labor concerning inspection of the devices, and gives the Commissioner authority to investigate accidents involving passenger tramways and to establish fees of up to $137 for the inspection and issuance of registration certificates. The act also requires that tramway operators obtain liability insurance coverage of not less than $1 million per occurrence; the required coverage must not be less than $500,000 per occurrence for devices generating $275,000 or less in annual revenue.

This act became effective September 7, 2005. (BC)

Toll Roads

North Carolina Turnpike Authority Changes

S.L. 2005-275 (HB 253) makes the following changes to the law governing the North Carolina Turnpike Authority: authorizes the North Carolina Turnpike Authority (Authority)to adopt transportation corridor official maps to protect proposed turnpike project corridors from development for up to three years; increases the number of projects the Authority may undertake from three to nine, and specifies that one of the projects must be a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia; authorizes the Authority to use contract incentives to expedite completion of turnpike projects; and authorizes the Authority to contract for the accelerated construction of a described toll bridge with a single private firm, directs the Department of Transportation to participate in the cost of any needed preconstruction activities related to the bridge project, if requested by the Authority, and requires the Authority to report to the Joint Legislative Transportation Oversight Committee on December 1, 2005, and each December thereafter, on the progress of the toll bridge project.

The act extends until July 1, 2009 the authority of the Department of Transportation (Department) to issue a license to an applicant to finance, design, construct, maintain, improve, own, or operate solely from private resources one pilot toll transportation project. The project is defined as a specified bridge.

The act establishes an 18-hour hurricane evacuation standard for any bridge and construction project undertaken pursuant to Chapter 136 of the General Statutes.

The act makes legislative findings about the importance of the Herbert C. Bonner Bridge at Oregon Inlet, and the need for its replacement. The act directs the Department to contract for the accelerated design, permitting, and construction of the Herbert C. Bonner bridge replacement with a single private firm, and specifies termini for the bridge. For this project, the act requires the Department to submit a request for proposals (RFP) for the project to the Joint Legislative Transportation Oversight Committee for review and comment within 90 days, issue the RFP 30

days thereafter, and report to the Joint Legislative Transportation Oversight Committee on December 1, 2005, and each December thereafter, on the progress of the bridge project.

The act appoints Lanny Wilson of New Hanover County to the North Carolina Turnpike Authority for a term expiring January 14, 2009.

This act became effective August 12, 2005. (GSP)

Establishing Tollways on Federally Funded Highways Designated as Interstates

S.L. 2005-276, Sec. 28.21 (SB 622, Sec. 28.21) directs the North Carolina Department of Transportation to apply to the United States Department of Transportation for a permit to allow tolling on interstate highways in North Carolina, with Interstate 95 being the priority project. This section also amends North Carolina statutory law to authorize the North Carolina Turnpike Authority to collect tolls on existing interstate highways for which a permit has been issued by the United States Department of Transportation. Any revenue generated by the tolls must be used to repair and maintain the interstate on which the tolls were collected.

This section became effective July 1, 2005. (WGR)

Trucks

Amend Motor Carrier Safety Statutes

S.L. 2005-64 (HB 761) amends the statute governing the penalty for failure of a motor carrier to comply with registration and insurance verification requirements of State law. The act provides that a for-hire motor carrier found to be in violation of the State registration and insurance requirements be "placed out of service" until the motor carrier is in compliance and the penalty imposed for the violation is paid, unless the officer finds that the continued operation of the vehicle will not jeopardize collection of the penalty.

This act became effective May 26, 2005. (BC)

Hold Harmless/Motor Carrier Contracts

S.L. 2005-185 (HB 1163). See **Commercial Law and Consumer Protection**.

Commercial Drivers License/Federal Compliance

S.L. 2005-349 (HB 670) makes various changes to North Carolina law applicable to commercial drivers licenses in order to comply with federal law. The 1999 federal Motor Carrier Safety Improvement Act made numerous changes to the Commercial Drivers License program, and gave states three years to implement conforming changes to their laws. By September 30, 2005, all states were required to be in compliance with the Act and federal regulations promulgated pursuant to it, or be subject to losing 5% of their federal aid highway funds. This act makes the following changes to North Carolina law to comply with this federal mandate:

No Masking of Convictions. – The act amends the definition of "conviction" to specify that a conviction includes:

- A prayer for judgment continued granted for an offense occurring in North Carolina, if the offender holds a commercial drivers license, or if the offense occurs in a commercial motor vehicle; and
- A final conviction, including a no contest plea, for an offense occurring out of state, if the offender holds a commercial drivers license, or if the offense occurs in a commercial motor vehicle.

Gross Vehicle Weight Rating (GVWR). – The act amends the definition of GVWR to provide that, for purposes of commercial drivers license and skills testing, the manufacturer's GVRW must be used.

Serious Traffic Violations. – The act amends the definition of "Serious Traffic Violation" (used for commercial drivers license disqualification) to include the listed offenses when operating any motor vehicle, not just a commercial motor vehicle.

License for New Resident. – The act provides that a person holding a commercial drivers license in another jurisdiction must apply for a transfer and obtain a North Carolina issued commercial drivers license within 30 days of becoming a resident.

Authority of Division/Canceled License or Endorsement. – The act authorizes the Division of Motor Vehicles to:

- Prohibit a person from reapplying for a commercial drivers license for 60 days after the person's license is canceled for failure to give correct information, or for committing fraud in an application.
- Revoke an "H" (hazardous materials) endorsement if the federal Transportation Security Administration determines that the holder is a security threat.

Disqualification. – The act requires a one-year disqualification to drive a commercial motor vehicle for any of the following:

- A first conviction of impaired driving of a vehicle that is not a commercial vehicle by a commercial drivers license holder.
- A first conviction of hit and run while driving any vehicle.
- A first conviction of a felony in which any motor vehicle was used by a commercial drivers license holder.
- Refusal to submit to a chemical test when charged with an implied-consent offense while driving any vehicle.
- A civil revocation for certain implied-consent offenses, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was operating a commercial motor vehicle.
- A first conviction of vehicular homicide or vehicular manslaughter occurring while a person was operating a commercial motor vehicle.
- Driving a commercial motor vehicle during a period when a person's commercial drivers license is revoked, suspended or canceled, or the driver is disqualified from operating a commercial motor vehicle.

With regard to disqualifications, the act also provides:

- That a 60- or 120-day disqualification for serious traffic violations is in addition to, and must be served at the end of, any other prior disqualifications.
- For disqualification to operate a commercial motor vehicle for an offense occurring in another jurisdiction, even if the offense occurred prior to a person being licensed in North Carolina, and even if no action was taken in the other jurisdiction.
- For a 30-day disqualification of a driver determined to be an "imminent hazard," as defined under federal law.

Convictions More than 10 Years Old. – The act provides that convictions more than 10 years old for offenses occurring in a commercial motor vehicle, and a second failure to submit to a chemical test when charged with an implied-consent offense that occurred while a person was driving a commercial motor vehicle, must be considered in determining whether a driving privilege should be suspended or revoked.

Licensing Qualifications. – The act amends the commercial drivers license qualifications standards to:

- Require knowledge and skills tests as provided under federal law; and
- Specify that the manufacturer's GVWR of a vehicle (not license or other weight rating) shall be used for skills testing.

Endorsements. – The act clarifies that a person applying for any commercial driver license endorsement must pass a knowledge test.

Penalties. – The act increases the civil penalties for violation of:

- Commercial drivers license requirements.
- Commercial drivers license notification requirements.
- Commercial drivers license employer requirements.
- Railroad crossing statutes.

Speeding. – The act makes it a Class 2 misdemeanor for a person to drive a commercial motor vehicle with a load subject to an oversize or overweight permit 15 miles per hour or more over the posted speed limit (previously in excess of 15 miles per hour).

Railroad Crossing Offenses/Employers. – The act extends application of 5 railroad crossing offenses to employers of commercial motor vehicle drivers by providing that any employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate one of those 5 statutes is guilty of an infraction (with a penalty of not more than $100), and subject to a civil penalty (of not more than $11,000).

This act became effective September 30, 2005, and applies to offenses committed on or after that date. (WGR)

Miscellaneous

Campus Police Act

S.L. 2005-231, Sec. 11 (SB 527, Sec. 11) gives campus police officers commissioned by the Attorney General authority to tow vehicles unlawfully parked in areas designated for handicapped drivers and passengers.

This section became effective July 28, 2005.

Sections 1 through 3, 8, 9 and 12 remove the statutory authority from the Company Police Act to the newly created Campus Police Act. For additional information see **Courts, Justice, and Corrections.**

Sections 4-7 make other changes. For additional information see **Criminal Law and Procedure.** (BC)

Modify Global Transpark Debt

S.L. 2005-276, Sec. 28.17 (SB 622, Sec. 28.17) amends the duties of the State Treasurer related to investment of assets in the Escheat Fund. Prior to the enactment of this section, the State Treasurer could invest funds in obligations of the North Carolina Global Transpark Authority that had a final maturity not later than August 31, 2005. This section extends the potential maturity date to October 1, 2007. The section is also amended to require that, if property owned by the Global Transpark is divested, the proceeds must be used to fulfill any unmet obligations on the investments.

This section became effective July 1, 2005. (WGR)

Amend House Movers Law

S.L. 2005-354 (HB 665) amends the law related to professional housemovers in North Carolina. Professional housemovers must be licensed by the Department of Transportation (Department), and they must secure permits from the Department for every move undertaken on State roads. This act amends the professional housemovers laws as follows:

- Changes the definition of "house" to mean a dwelling, building, or structure in excess of 15 feet, instead of the current 14 feet. Mobile homes and modular homes are not included in the definition of "house" when they are being transported from the manufacturer to the first set-up site. The act specifies that those structures are also

excluded from the definition of "house" when they are being transported from a licensed retail dealer location to the first set-up site.

- Specifies that proof of housemoving experience must be furnished at the time of application for applicants who have not been previously licensed. An applicant must have sufficient housemoving experience to be licensed in North Carolina.
- Provides that a license is effective from the date of issuance and expires on July 31 of each year (previously one year from the date of issuance). Licenses are still renewable on an annual basis thereafter.
- Specifies that the exemption from licensure for individuals moving their own buildings to or from their own property applies to individuals who own their own towing vehicles and are moving their own buildings to or from their own property.
- Requires that escort vehicles furnished by the housemover be certified escort vehicles, and, instead of specifying in the statute how the escort vehicles must be equipped, any restrictions are as provided on the permit issued for the move.

This act became effective October 1, 2005. (WGR)

Studies

Referrals to Existing Commissions/Committees

Study Online Dealer Registration Enhancement

S.L. 2005-276, Sec. 28.22 (SB 622, Sec. 28.22) directs the Joint Legislative Transportation Oversight Committee to study the feasibility and cost of enhancing the Online Dealer Registration System to allow motor vehicle dealers the option of performing titling and registration services on-site, including whether the Division of Motor Vehicles or a third party vendor would best be able to provide these services. The section also prohibits any expenditure of funds appropriated for enhancement of the system before November 1, 2005, and requires the Division to report to the Joint Legislative Transportation Oversight Committee at least 30 days before making any expenditure with a detailed plan outlining planned expenditures, expected results, completion date, and the proposed implementation date of the enhanced system.

This section became effective July 1, 2005. (WGR)

Referrals to Departments, Agencies, Etc.

DOT Report/Federal Rail Assistance to North Carolina

S.L. 2005-222 (HB 1280) directs the Department of Transportation, no more than 60 days following enactment of reauthorization of the federal Surface Transportation Program, to report to the General Assembly on strategies to match federal rail funds to provide rail improvements, such as restoration of the rail corridor from Wallace to Castle Hayne, a rail connection between north-south and east-west routes in the vicinity of Pembroke, service to Winston-Salem, and service to the western and southeastern parts of the State. The Department is directed to submit its report to the Joint Appropriations Subcommittee on Transportation, or, if the General Assembly is not in session, to the Joint Legislative Transportation Oversight Committee.

This act became effective July 27, 2005. (GSP)

Report on Stormwater Pilot Project

S.L. 2005-276, Sec. 28.19 (SB 622, Sec. 28.19) directs the Department of Transportation to report to the Joint Legislative Transportation Oversight Committee by August 1, 2005, on its plan to clean up ocean outfalls.

This section became effective July 1, 2005. (GSP)

Department of Transportation to Share Real-Time Weigh-in Motion Data and Periodic Summaries of Data Collected at Existing DOT Weigh-in Motion Sites

S.L. 2005-276, Sec. 28.25 (SB 622, Sec. 28.25) requires the Department of Transportation to provide the State Highway Patrol, Motor Carrier Enforcement Section, access to real-time data collection efforts at all existing weigh-in-motion sites by October 1, 2005, and directs the State Highway Patrol to report on this topic to the Joint Legislative Transportation Oversight Committee by August 1, 2006.

This section became effective July 1, 2005. (GSP)

Preliminary Assessment of Port Development and Rail Support Services

S.L. 2005-276, Sec. 28.26 (SB 622, Sec. 28.26) authorizes the Rail Division of the Department of Transportation, in association with the State Ports Authority, to assess the need for the State to create a deep channel port, an inland ocean cargo terminal, a logistics operations center, and identify collateral rail needs. The Rail Division is directed to report the results of the assessment to the Joint Legislative Transportation Oversight Committee by May 1, 2006.

This section became effective July 1, 2005. (GSP)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 24
Utilities

Kory Goldsmith (KG) and Steve Rose (SR)

Enacted Legislation

Regulate Telecommunication Services

S.L. 2005-95 (SB 494) states that broadband service provided by public utilities is sufficiently competitive and must not be regulated by the North Carolina Utilities Commission. "Broadband service" is defined as any service that consists of high-speed access capability of transmitting not less than 200 kilobits per second and is either (1) used to provide access to the Internet, or (2) provides computer processing, information storage, information content, or protocol conversion.

This act became effective June 21, 2005. (KG)

Electric Service Conflicts

S.L. 2005-150, Secs. 2-9 (SB 512, Secs. 2-9) are intended to help resolve conflicts caused by annexations of territory being served by electric service suppliers other than the annexing city. The act also provides methods to resolve territorial disputes regarding electric service that may arise between municipal suppliers of electricity and electric membership corporations.

The act provides that during the period from June 1, 2005 to May 31, 2007, a city may not supply electric service in any area outside its corporate limits, as they existed on June 1, 2005, that is assigned to an electric membership corporation ("EMC") by the North Carolina Utilities Commission ("Commission"), unless the EMC consents. During this same time period, an EMC is prohibited from supplying electric service within three miles of the corporate limits of a municipality that operates an electric system, as the corporate limits existed on June 1, 2005, unless the EMC has the permission of the city. The EMC or the city (respectively) must consent unless it believes, in good faith, that the extension is not necessary for the delivery of an adequate and reliable electricity supply. Disputes are submitted to prelitigation mediation using the methods already in place in the courts. Mediated agreements are subject to approval by the Commission. The parties may mutually agree to waive mediation. In the event of a waiver of mediation or the failure to reach an agreement, the dispute goes to binding arbitration, with the arbitrator being a member of the Public Staff.

The act also permits cities to enter into agreements with other electric suppliers to allow the provision of electric service in areas where each of the parties would otherwise not have been permitted to provide electric services. These agreements may apply to electric services supplied both inside and outside of the city. Agreements with electric suppliers that are subject to the territorial assignment jurisdiction are subject to the Commission's approval. During the period from June 1, 2005 to May 31, 2007, the EMCs and the cities are directed to negotiate in good faith to resolve disputes related to the provision of future electric service. Unresolved issues are submitted to a member of the Public Staff for resolution.

The act also requires any electric supplier who provides services in an area where the consumer has the right to choose its electric supplier, to notify the consumer of the right to choose between electric suppliers. Failure to provide this notice results in loss of the right to serve those premises.

The act also adds a new provision that requires an electric supplier who is supplying electricity in an area the supplier has no right to serve to cease providing services when notified

by an electric supplier who does have a right to provide services in the area. If the electric supplier who is acting outside its authority fails to discontinue service, the supplier with the right to serve may bring an action to enforce the obligation to cease services and may also recover the cost of enforcing the action, including attorneys' fees.

These sections became effective July 5, 2005. (SR)

Utilities Access to Public Rights-of-Way

S.L. 2005-286 (HB 1469) provides that once a plat is recorded showing dedicated public streets or rights-of-way, those streets or rights-of-way are available to a public utility or cable television company for placement of infrastructure. No use by a utility or cable television company is permitted until such recordation. Once the plat is recorded, a developer has no liability arising from the activities of a public utility or cable company in that street or right-of-way.

This act became effective August 22, 2005, with respect to maps and plats recorded after that date. (SR)

Telecommunication Service Providers

S.L. 2005-385 (HB 1468) provides that if a telecommunications service provider enters into an agreement to provide local telephone service to a subdivision or area, and if the right of way or access to deliver telephone services is not made available to other telecommunication service providers, then the provider that enters into the agreement will be considered the universal service provider for that subdivision or area. Also, if the local exchange company (LEC) is not a party to that agreement, it will not be considered the universal service provider for that subdivision or area. The LEC must notify the appropriate State agency (usually the North Carolina Utilities Commission, but in some circumstances the Rural Electrification Authority) that it is no longer the universal service provider for the area that is subject to the agreement. The appropriate State agency retains the authority to re-designate the LEC as the universal service provider if the telecommunications service provider that entered into the agreement is no longer willing or able to provide adequate services to the subdivision or area.

Under federal law, a universal service provider is the telephone company that is responsible for delivering the following to all telephone customers at a reasonable cost:

- Access to a telephone network with the ability to place and receive calls.
- Access to touch tone capability.
- Single-party service.
- Access to emergency systems including, where available, 911 and Enhanced 911.
- Access to operator services.
- Access to interexchange services.
- Access to directory assistance.
- Limited long-distance calling (for those low-income users who qualify).

This act became effective September 13, 2005, and applies to agreements entered into on or after that date. (KG)

911/Wireless Service/Wire Expenses and Charges

S.L. 2005-439 (HB 1261) makes a number of changes to the laws related to the collection and expenditure of both wire (landline) and wireless (cellphone) 911 service charges, clarifies the authority of the 911 Wireless Board (Board), and directs the Joint Legislative Utilities Commission to study issues related to the Wire 911 service charge. (See **Studies** below in this same Chapter).

Wireless Changes. – The act reduces the monthly surcharge from 80¢ to 70¢ for each Wireless telephone service (CMRS) connection beginning October 1, 2005. It also provides that each CMRS provider must collect the monthly surcharge from subscribers to prepaid wireless service and provides the methods of collection (either monthly from each subscriber or monthly by a calculation based on revenue from prepaid customers). It also modifies the allocation of the moneys from the Wireless Emergency Telephone System Fund ("Wireless 911 Fund"). CMRS providers would receive 53% of the funds, down from 60%. 47% of the Wireless 911 Fund (up from 40%) would be divided among the eligible primary public service agencies that receive and dispatch 911 calls (PSAPs). It also clarifies that a PSAP must comply with the wireless Enhanced 911 service requirements established by the Federal Communications Commission ("FCC") Order and any rules or regulations adopted by the FCC to implement the Order. It creates a new statute (G.S. 62A-25.10) that outlines the procedure the Board must use if it finds that a CMRS provider or a PSAP is using moneys from the Wireless 911 Fund for unauthorized purposes, and authorizes the Board to suspend funding until the CMRS provider or the PSAP takes corrective action.

The act also makes a number of changes related to the Board. It provides for staggered terms and that members stay on the Board until their successors are appointed and qualified. It also clarifies that members, officers, and employees of the Board are subject to G.S. 14-234, the criminal statute that prohibits public officers and employees from benefiting from public contracts in which they have an interest. It also authorizes the Governor to remove any member of the Board for misfeasance, malfeasance, or nonfeasance. It also specifies the powers and duties of the Board, including the development of a comprehensive wireless Enhanced 911 telecommunications plan for communicating Enhanced 911 call information across networks and among PSAPs.

Wire Changes. – The act clarifies the types of expenses that are eligible for payment from the Emergency Telephone System Fund. The amendments provide that only expenses that are specifically authorized under G.S. 62A-8(a) will be allowed. Those expenses are: (1) the lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software, and database provisions, addressing, and nonrecurring costs of establishing a 911 system; and (2) the rates associated with the service supplier's 911 service and other service supplier recurring charges. It also puts a cap on the maximum 911 charge that may be imposed by a local government. The cap is calculated as the greater of the amount charged by the local government on July 1, 2005, or the amount charged under a resolution adopted on or before August 15, 2005, that becomes effective on or before December 15, 2005.

The provisions related to the cap on the 911 charge imposed by a local government became effective July 1, 2005. The remainder of this act became effective September 27, 2005. (KG)

Studies

911/Wireless Service/Wire Expenses and Changes

S.L. 2005-439, Sec. 11 (HB 1261, Sec. 11) directs the Joint Legislative Utility Review Committee ("Committee") to study the following issues related to Article 1 of Chapter 62A of the General Statutes (Public Safety Telephone Service):

- Mechanisms for increased accountability for the collection and spending of 911 charges by local governments.
- Modification of what constitutes an authorized expenditure from a local Emergency Telephone System Fund.
- Whether to adopt a statewide, uniform 911 charge.
- Whether to create a State Emergency Telephone Fund and a formula for distributing those moneys to local governments.

- Whether to designate the Community College System as the preferred provider of training for public safety answering point staff.
- Any other issues related to the Article the Committee determines are relevant.

The Committee shall report any findings and recommendations to the General Assembly in 2006 and 2007.

This section became effective September 27, 2005. (KG)

For a complete list of the studies and reports authorized by the 2005 Session of the 2005 General Assembly, please refer to the Appendix contained in this publication.

Chapter 25
Vetoed Legislation

Drupti Chauhan (DC)

Currituck Property Conveyance

SB 130 would have conveyed certain State property to the County of Currituck and to Johnson and Wales University. The act would have provided that the State of North Carolina was to convey to Currituck County the title in fee simple absolute with no restrictions or covenants all of the tracts of land in Crawford Township, Currituck County, that were described in the bill. The consideration for the conveyance would have been one dollar. SB 130 also would have provided that the State of North Carolina was to convey to Johnson and Wales University the title in fee simple absolute with no restrictions or covenants all of the property and buildings and improvements situated on or in the property in the City of Charlotte that was described in the bill. The consideration for the conveyance would have been one dollar. The bill further stated that execution and delivery of the title would not require approval or participation by the Governor or the Council of State but instead would be executed and delivered by the State Property Office of the Department of Administration.

On March 25, 2005, Governor Michael F. Easley vetoed the bill. The Governor stated the following regarding his veto:

> "Pursuant to the mandate of Section 19.5 of the 2004-05 budget bill which states **'Upon the sale of the James K. Polk Building in the City of Charlotte**…**'** *(emphasis added),* the State put the property up for bid. On March 24, 2005, the Council of State approved the sale of the Polk Building to Trinity Capital Advisors, LLC, pursuant to the legally established process set up for disposal of surplus state property. Since the property has been sold and deeded for $5.25 million, it is not available to be deeded to another party as per this legislation, and such a conveyance as contemplated in the bill would be illegal. Therefore, I veto the bill."

The House and Senate then passed a substitute bill, HB 1061, Currituck Property Conveyance and it was ratified and signed by the Governor on April 28, 2005. See **Local Government** for a summary of S.L. 2005-18 (HB 1061).

S.L. 2005-276, Sec. 13.6(b) (SB 622, Sec. 13.6(b)) directs the Department of Commerce to allocate one million dollars to Johnson and Wales University from the One North Carolina Fund for the 2005-2006 fiscal year for the purposes of financial assistance. S.L. 2005-276, Sec. 13.6(b) (SB 622, Sec. 13.6(b)) became effective July 1, 2005. (DC)

Facilitate Hiring of Teachers

HB 706 would have amended the teacher certification law. The act would have required that an applicant for teacher certification had to meet the requirements under the federal No Child Left Behind Act of 2001 (NCLB) and would have specifically eliminated a standard examination (currently PRAXIS II) for any applicant for teacher certification except for beginning teachers seeking an initial certificate.

Beginning Teachers. – Both in-state applicants and applicants from other states who have completed an approved teacher education program who are beginning teachers and are seeking an initial certificate would have had to meet the following certification requirements:

- An applicant for a certificate as an elementary education teacher or a special education teacher would have had to either take and pass a standard examination

(currently PRAXIS II) or otherwise meet the definition of a highly qualified teacher under NCLB.

- An applicant for a certificate in all other areas of certification would have had to either take and pass the appropriate PRAXIS II test or complete an appropriate academic major, graduate degree, or comparable coursework or otherwise meet the definition of a highly qualified teacher under NCLB.

Initial Certification for Out of State Teachers. – The act would have authorized the initial certification for a teacher from another state who meets all of the following criteria:

- Has less than three years of full-time classroom teaching experience.
- Is fully certified and highly certified under NCLB in that other state.
- Is employed as a teacher by a local school administrative unit in North Carolina.

The initial certification would have been for the period of time necessary for the teacher to acquire three years of full-time teaching experience in North Carolina and the other state combined.

Continuing Teacher Certification. – The act would have authorized continuing certification for a teacher from North Carolina or another state who meets all of the following criteria:

- Has three or more years of experience as a full-time teacher.
- Is fully certified and highly qualified under NCLB in North Carolina or in that other state.
- Is employed as a teacher by a local school administrative unit in North Carolina.

International Faculty Certificates. – The act would have authorized the State Board of Education (SBE) to issue an international faculty certificate to an individual on a cultural exchange visa who meets all of the following criteria:

- Has a university degree and a teaching certificate in his or her home country.
- Is qualified in his or her home country to teach the subjects he or she will teach.
- Speaks English proficiently.
- Meets the definition of highly qualified under NCLB.

The certificate would have been granted for a period of time during which the teacher holds a cultural exchange visa, not to exceed three consecutive years. An individual on a cultural exchange visa would not have been eligible to receive any other teacher certificate.

The act would have reduced from five years to three years the amount of time a lateral entry teacher would have to complete teacher certification requirements. The SBE would have been authorized to continue to issue provisional licenses, temporary permits, and emergency permits that are valid through June 30, 2006 on the same basis as they were issued prior to the effective date of this act. This act would have applied to all persons initially employed as teachers by a local school administrative unit in North Carolina beginning with the 2005-2006 school year.

On September 29, 2005, Governor Michael F. Easley vetoed the bill. The Governor stated the following regarding his veto:

> "This bill reduces the North Carolina teaching standards to the lowest in America. It cheats our children out of a quality education and dishonestly classifies unqualified teachers as 'highly qualified.' Further, it restricts the authority of the State Board of Education to certify teachers and puts it within the General Assembly. Therefore, I veto the bill." (DC)

APPENDIX

STUDIES AND REPORTS AUTHORIZED BY 2005 SESSION

Legislative Study Commissions and Committees

STUDIES DIRECTED OR AUTHORIZED BY THE 2005 NC GENERAL ASSEMBLY

BOARD, COMMISSION, COMMITTEE OR DEPARTMENT- ISSUES	REPORTING DATE	STATUTORY AUTHORITY
Administration, Department of		
✓ Advocacy Programs in the Department of Administration, Continuation of the Study of	The Secretary shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House of Representatives Appropriations Committees by April 1, 2006	S.L. 2005-0276 § 19.1.
✓ Alternative Fuels, Synthetic Lubricants, and Efficient Vehicles; State Fleets Shall Develop and Implement Plans to Improve Use of	Shall report implementation plans to the Legislative Commission of Governmental Operations by January 1, 2006 and compile a annual report by December 1, 2006 and annually thereafter on November 1	S.L. 2005-0276 § 19.5.(a)(c)
Administrative Office of the Courts		
✓ Wake County Family Court, Feasibility of Establishing a Family Court in District Court District 10 -	Report to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2006	S.L. 2005-0276 § 14.18
Biotechnology Center, North Carolina		
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)
Child and Family Leadership Council, North Carolina		
✓ Report of Activities With Recommendations	Shall report to the Office of the Governor, the Joint Appropriations Committees and subcommittees on Education, Justice and Public Safety, and Health and Human Services, and the Fiscal Research Division semiannually on January 1 and July 1	S.L. 2005-0276 § 6.24.(b)(4)(g)
Children's Services Study Commission, Coordination of		
✓ Findings and Recommendations	Shall report annually to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and the Fiscal Research Division by April 1	S.L. 2005-0276 § 10.25.(m)

Children's Services Work Group ✓ Findings and Recommendations **CREATED**	Shall report to the Coordination of Children's Service Study Commission an interim report by December 15, 2005 and a final report by April 15, 2006. If the General Assembly has adjourned or the Commission's membership has not been appointed, the Work Group shall report to Joint Legislative Education Oversight Committee, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services	S.L. 2005-0276 § 10.25.(h)
Clean Water Management Trust Fund ✓ Conservation Easements, Study Management and Stewardship	Shall report to the Environmental Review Commission by December 1, 2005	S.L. 2005-0276 § 6.22.
Commerce, Department of ✓ Industrial Commission Study of Alternate Funding, Report and Recommendations (In Cooperation with the Industrial Commission)	Shall report to House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Office of State Budget and Management and the Fiscal Research Division by April 1, 2006	S.L. 2005-0276 § 13.6A.
✓ One North Carolina Small Business Program Activities and Expenditures	Shall report to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Finance Committees, the Chairs of the House of Representatives and Senate Appropriations Committees and the Fiscal Research Division at the end of each fiscal quarter	S.L. 2005-0276 § 13.14.(b)
✓ Trade Jobs for Success Reporting (In cooperation with the Employment Security Commission and the Community Colleges System Office)	Shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House of Representatives Appropriations Committees by August 1, 2005. A annual report to the Governor, the Joint Legislative Commission on Government Operations, the Chairs of the Senate and House of Representatives Appropriations Committees and the Fiscal Research Division beginning January 1, 2006	S.L. 2005-0276 § 13.4A.(a)(b)
Community Development Initiative, Inc., North Carolina ✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)

Community Development Corporations, Inc., North Carolina Association of		
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)
Community Colleges, State Board of		
✓ Customized Industry Training Program (CIT)	Shall report annually to the Joint Legislative Education Oversight Committee	S.L. 2005-0276 § 81.4.(b)
✓ Ferry Boat Operator Training Feasibility	Shall report to the Joint Legislative Education Oversight Committee and the Joint Legislative Transportation Oversight Committee by December 1, 2005	S.L. 2005-0276 § 8.7.(b)
✓ Higher Education Strategy/Amend Reporting Requirement, Joint Study of (In cooperation with the University of North Carolina Board of Governors)	Shall report to the General Assembly and the Joint Legislative Education Oversight Committee by June 15, 2005, and shall submit a final report by December 31, 2006	S.L. 2005-0276 § 9.18.
✓ Partnerships for New 2+2 Programs, Encourage (In cooperation with the University of North Carolina Board of Governors)	Shall report to the Joint Legislative Education Oversight Committee by February 1, 2006	S.L. 2005-0276 § 9.2.(b)
✓ Salaries of Community College Faculty and Professional Staff	Shall report to the Appropriations Subcommittees on Education, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Fiscal Research Division, and the Office of State Budget and Management by December 1, 2005, and every year thereafter through December 1, 2009	S.L. 2005-0276 § 8.3.(f)
✓ Tuition Waiver Program Expansion (In cooperation with the University of North Carolina Board of Governors)	Shall report to the Joint Legislative Education Study Committee by April 1, 2006	S.L. 2005-0276 § 9.25.(b)
✓ Workforce Development Programs	Shall report to the Joint Legislative Education Oversight Committee on September 1 of each year	S.L. 2005-0276 § 81.4.(b)
Community Colleges Systems Office		
✓ College Information System Project, Use of Funds for the	Shall report on a quarterly basis to the Joint Legislative Education Oversight Committee	S.L. 2005-0276 § 81.1.(b)
✓ Multi-Campus Funds, Report on the Adequacy of	Shall report to the Education Appropriations Subcommittee of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by October 1 of each year	S.L. 2005-0276 § 81.5.

Community Colleges Systems Office – CONTINUED		
✓ Trade Jobs for Success Reporting (In cooperation with the Employment Security Commission and the Department of Commerce)	Shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House of Representatives Appropriations Committees by August 1, 2005. A annual report to the Governor, the Joint Legislative Commission on Government Operations, the Chairs of the Senate and House of Representatives Appropriations Committees and the Fiscal Research Division beginning January 1, 2006	S.L. 2005-0276 § 13.4A.(a)(b)
Communities in Schools		
✓ Report of Activities and Operations	Report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Joint Legislative Education Oversight Committee by April 1 or each year	S.L. 2005-0276 § 16.3.(c)
Correction, Department of		
✓ Cleveland Correctional Center, Study Conversion to Minimum Security	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006	S.L. 2005-0276 § 17.18.
✓ Community Service Work Program	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1 of each year	S.L. 2005-0276 § 17.21.
✓ Contracted Medical Positions, Conversion of	Shall report to the Joint Legislative Commission on Government Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2006	S.L. 2005-0276 § 17.7.(b)
✓ Corrections Enterprises Long-Range Plan	Shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006	S.L. 2005-0276 § 17.16.(a)
✓ Criminal Justice Partnership Program, State and County	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by February 1 of each year	S.L. 2005-0276 § 17.23.(d)

Correction, Department of - CONTINUED		
✓ Electronic Monitoring Program, Report of	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by March 1 of each year	S.L. 2005-0276 § 17.19.(a)
✓ Energy Committed to Offenders, Inc., Contract and Report	Shall report to the Joint Legislative Commission on Government Operations by February 1 of each year	S.L. 2005-0276 § 17.17A.
✓ Federal Grant Reporting (In cooperation with the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department and the Department of Juvenile Justice and Delinquency Prevention)	Shall report to the Joint Legislative Commission on Government Operations, the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by May 1 of each year	S.L. 2005-0276 § 17.1.
✓ Global Positioning Systems for Sex Offenders, Use of	Shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005	S.L. 2005-0276 § 17.19.(b)
✓ Inmate Community Work Crews and Inmate Labor Contracts, Report on	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittee on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006	S.L. 2005-0276 § 17.14.
✓ Inmate Custody and Classification System, Findings and Recommendations	Shall report to the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by April 15, 2006	S.L. 2005-0276 § 17.12.(b)
✓ Inmate Health Care, Study of Cost Containment	Shall report to efforts to achieve reduction numbers to the Chairs of the Senate and House of Representatives Appropriations Subcommittee on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by April 1, 2006 and a report detailing its initial findings shall report by April 1, 2006. A final report shall be submitted by December 2006 to the General Assembly	S.L. 2005-0276 § 17.15.(c)(d)
✓ Mutual Agreement Parole Program Report	Shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006, and March 1 of each subsequent year	S.L. 2005-0276 § 17.27.

Correction, Department of – CONTINUED		
✓ Probation and Parole Caseloads, Report on	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1 of each year. Further, the Department shall study and report at least biannually on probation/parole officer workload and report a result of the study to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by January 1, 2007	S.L. 2005-0276 § 17.20.(a)(b)(c)
✓ Reimburse Counties for Housing and Extraordinary Medical Costs for Inmates, Parolees, and Post-Release Supervisees Awaiting Transfer to State Prison System	Shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety	S.L. 2005-0276 § 17.2.
✓ Security Staffing Formulas, Implementation of	Shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety a progress report by October 1, 2005 and a final report by April 1, 2006	S.L. 2005-0276 § 17.4.(b)(c)
✓ Unit Management, Staffing Study of	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006	S.L. 2005-0276 § 17.7.
Corrections, Crime Control, and Juvenile Justice Oversight Committee		
✓ Local Detention Centers, Study of	Shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate upon convening of the 2006 Regular Session of the 2005 General Assembly	S.L. 2005-0276 § 16.9.
Crime Control and Public Safety, Department of		
✓ Federal Grant Reporting (In cooperation with the Department of Correction, the Department of Justice, the Judicial Department and the Department of Juvenile Justice and Delinquency Prevention)	Shall report to the Joint Legislative Commission on Government Operations, the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by May 1 of each year	S.L. 2005-0276 § 17.1.

Crime Control and Public Safety, Department of - CONTINUED		
✓ National Guard Tarheel Challenge Program, Annual Evaluation of	Shall report to the Chairs of the House of Representatives and Senate Appropriations Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1 of each year of the biennium	S.L. 2005-0276 § 17.18.1.
✓ Victims Assistance Network Report	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by December 1 of each year of the biennium	S.L. 2005-0276 § 17.18.2.
Criminal Justice Information Network		
✓ Fingerprint System Replacement, Statewide Automated (In cooperation with the Department of Justice)	Shall report to the Joint Legislative Commission on Governmental Operation's Subcommittee for Justice and Public Safety by November 1, 2005	S.L. 2005-0276 § 15.9.(b)
Domestic Violence, Joint Legislative Committee **CREATED**		
✓ Recommendations and Legislative Proposals	Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly and may contain any legislation needed to implement recommendations of the committee	S.L. 2005-00356 § 1.
Economic Development Oversight Committee, Joint Legislative **CREATED**		
✓ Recommendations and Legislative Proposals	Shall report before the beginning of the 2006 Regular Session of the 2005 General Assembly	S.L. 2005-0241 § 8.
e-NC Authority		
✓ Regional Education Networks, Feasibility Study for Developing (In cooperation with the North Carolina Rural Economic Development Center)	Shall report to the 2006 Regular Session of the 2005 General Assembly	S.L. 2005-0276 § 7.42.

e-NC Authority - CONTINUED		
✓ Report and Evaluation of Activities	Shall report to the Joint Legislative Commission on Governmental Operations by January 31, 2006 and quarterly thereafter	S.L. 2005-0276 § 13.12.(f)
Education, State Board of		
✓ At-Risk and Improving Student Accountability Allotments, Provide for new Accountability for the Use of Funds in the	Shall report annually to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by October 31	S.L. 2005-0276 § 7.61.(b)
✓ Disadvantaged Student Supplemental Funding	Shall report to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by February 15, 2006, and by January 15 of each subsequent year	S.L. 2005-0276 § 7.8.(b)
✓ Flexibility for High School Innovation, Evaluation of	Shall report to the Joint Legislative Education Oversight Committee by October 15, 2005, and annually thereafter	S.L. 2005-0276 § 7.33.(a)
✓ Financial Literacy in Public Schools, Teach	Shall report to the Joint Legislative Education Oversight Committee on proposed curriculum before implementation	S.L. 2005-0276 § 7.59.(c)
✓ LEA Assistance Program	Shall report to the Office of State Budget and Management, the Fiscal Research Division, and Joint Legislative Education Oversight Committee by May 15, 2006 and December 15, 2007	S.L. 2005-0276 § 7.24.
✓ Learn and Earn High Schools	Shall report to the Office of state Budget and Management, the Joint Legislative Education Oversight Committee and the Fiscal Research Division by January 15 of each fiscal year	S.L. 2005-0276 § 7.32.(d)
✓ Low-Wealth Counties, Reports on the Expenditure of Supplemental Funds for	Shall report annually to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee and the Fiscal Research Division by October 31	S.L. 2005-0276 § 7.60.
✓ Low-Wealth Counties, Supplemental Funding in	Shall report to the Joint Legislative Education Oversight Committee by May 1, 2006	S.L. 2005-0276 § 7.6.(i)
✓ Mentoring Programs, Effectiveness of	Shall report to the Joint Legislative Education Oversight Committee by October 15, 2006	S.L. 2005-0276 § 7.21.(c)
✓ Mentoring Programs to Retain Teachers	Shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2006	S.L. 2005-0276 § 7.21.(d)

Education, State Board of – CONTINUED		
✓ Planning Time for Teachers	Shall report to the Education Cabinet and the Joint Legislative Education Oversight Committee by January 15, 2006	S.L. 2005-0276 § 7.30.
✓ Small School System Supplemental Funding	Shall report to the Joint Legislative Education Oversight Committee by May 1, 2006	S.L. 2005-0276 § 7.7.(e)
✓ School Transportation, Study of	Consultant hired by the Department of Public Instruction shall report to the State Board of Education by December 1, 2005. The State Board of Education shall submit a implementation plan to the Joint Legislative Education Oversight Committee by March 15, 2006	S.L. 2005-0276 § 7.57.
✓ Small Specialty High Schools Pilot Program	Shall report to the Office of State Budget and Management, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division by November 15, 2006	S.L. 2005-0276 § 7.52.(b)
✓ Three Cooperative Innovative High School Programs	Shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by March 15, 2006	S.L. 2005-0276 § 7.33.(b)
✓ Twenty-First Century Learners, Schools Designed to Meet the Needs	Shall report to the 2006 Regular Session of the 2005 General Assembly	S.L. 2005-0276 § 7.43.(e)
Education Cabinet		
✓ Report of Activities With Recommendations	Shall report to the Joint Legislative Education Oversight Committee before April 15, 2006	S.L. 2005-0276 § 7.38.(b)
Education Oversight Committee, Joint Legislative		
✓ In-State Teach Tuition Benefit, Study	Shall submit an interim report to the 2005 General Assembly by May 30, 2007 and shall submit a final report to the 2007 General Assembly	S.L. 2005-0276 § 9.35.
Election, State Board of		
✓ HAVA Training Funds	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees by April 1, 2006	S.L. 2005-0276 § 23A.2.(c)

Employment Security Commission		
✓ Trade Jobs For Success Reporting (In cooperation with the Department of Commerce and the Community Colleges System Office)	Shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House of Representatives Appropriations Committees by August 1, 2005. A annual report to the Governor, the Joint Legislative Commission on Government Operations, the Chairs of the Senate and House of Representatives Appropriations Committees and the Fiscal Research Division beginning January 1, 2006	S.L. 2005-0276 § 13.4A.(a)(b)
Environment and Natural Resources, Department of		
✓ Animal Waste Management Systems, Extend and Expand Pilot Program for Inspection of	Shall report to the Environmental Review Commission, the Appropriations Subcommittees on Natural and Economic Resources in the Senate and House of Representatives and the Fiscal Research Division a semiannual interim report no later than April 15 and October 15	S.L. 2005-0276 § 12.7.(b)
✓ Express Review Program Statewide, Expand	Shall report annually to the Environmental Review Commission and the Fiscal Research Division by March 1	S.L. 2005-0276 § 12.2.(a)
✓ Grassroots Science Museum Program	Shall report to the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 12.5.(b)
✓ Natural Heritage Program, Report on	Shall report to the General Assembly and Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 12.4A.
✓ Water Resources Development Project Funds	Shall report to the Joint Legislative Commission on Governmental Operations, the Office of State Budget and Management and the Fiscal Research Division semiannually	S.L. 2005-0276 § 30.3.(c)
Environmental Review Commission		
✓ Conservation Easements, Management and Stewardship of	Clean Water Management Trust Fund Board of Trustees shall report to the Environmental Review Commission by December 1, 2005	S.L. 2005-0276 § 6.22.
Farm and Rural Families, Coalition of		
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)

Global Climate Change, Legislative Commission on **CREATED**		
✓ Findings and Recommendations	Shall report to the General Assembly and the Legislative Services Commission on or before November 1, 2006 at which time the Commission shall terminate	S.L. 2005-0442 § 11.
Harriet's House		
✓ Nonprofit Program Report	Shall report to the Joint Legislative Commission on Governmental Operations by February 1 of each year	S.L. 2005-0276 § 17.22.(a)
Health and Human Services, Department of		
✓ Accreditation of Residential Treatment Facilities, DHHS Study of	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 10.35A.(b)
✓ Adoption and Foster Care Programs (Work First Cash Assistance)	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by April 1, 2006	S.L. 2005-0276 § 5.1.(z2)
✓ Adoption Incentives for Children Who Are Difficult to Place, Study to Identify	Shall report to the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services and the Fiscal Research Division by October 1, 2005	S.L. 2005-0276 § 10.49.
✓ Adult Care Homes, Plan for Star-Rating System for	Shall report to the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services and the Fiscal Research Division by January 1, 2007	S.L. 2005-0276 § 10.41.
✓ Adult Care Homes, Quality Improvement Consultation Program	Shall report to the North Carolina Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services by April 1, 2006	S.L. 2005-0276 § 10.40A.(p)
✓ AIDs Drug Assistance Program	Shall report to the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services and the Fiscal Research Division an interim report by January 1, 2006 and a final report by May 1, 2006	S.L. 2005-0276 § 10.59.(b)

Health and Human Services, Department of – CONTINUED		
✓ At-Risk Children Attending Middle School, After-School Programs	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on its progress in complying with this subsection by May 1, 2006	S.L. 2005-0276 § 5.1.(z)
✓ Child Care Subsidy Reimbursement System	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Subcommittee on Health and Human Services and the Fiscal Research Division by April 30, 2006	S.L. 2005-0276 § 10.66.(b)
✓ Child Support Program, Enhanced Standards	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Subcommittee on Health and Human Services and the Fiscal Research Division by January 1, 2007	S.L. 2005-0276 § 10.41.
✓ Children With Special Needs, Early Intervention Reporting and Evaluation	Shall report to the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services and the Fiscal Research Division by December 1, 2005	S.L. 2005-0276 § 10.54.(c)
✓ Chronic Disease Prevention Activities Inventory	Shall report to the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Subcommittee on Health and Human Services and the Fiscal Research Division by February 1, 2006	S.L. 2005-0276 § 10.56.
✓ Community Alternative Programs Reimbursement System	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by May 1, 2006	S.L. 2005-0276 § 10.20.(b)
✓ Community Mental Health, Developmental Disabilities, and Substance Abuse Services; DHHS Policies and Procedures in Delivering	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance abuse Services on October 1, 2005 and February 1, 2006	S.L. 2005-0276 § 10.31.
✓ Community Health Center Funds Study by Office of Rural Health	Shall report to the 2006 Regular Session of the 2005 General Assembly upon its convening	S.L. 2005-0276 § 10.9.(d)
✓ Comprehensive Treatment Services Program	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and the Fiscal Research Division a progress report by April 1, 2006 and April 1, 2007	S.L. 2005-0276 § 10.25.(m)

Health and Human Services, Department of – CONTINUED		
✓ DDA Group Home Funding	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division a progress report by February 1, 2006 and a final report by May 1, 2006	S.L. 2005-0276 § 10.19.(b)
✓ Defibrillators in Public Buildings, Pilot Program for Automatic External	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 10.57.(c)
✓ DHHS Schools Receive Federal Funds, Ensure	Shall Report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by January 31, 2006	S.L. 2005-0276 § 7.54.(c)
✓ Family Preservation Services Funding and Performance Enhancements, Intensive	Shall Report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by February 1, 2006	S.L. 2005-0276 § 10.51A.(d)
✓ Health Care Personnel Registry	Shall report to the North Carolina Study Commission on Aging by December 1, 2005	S.L. 2005-0276 § 10.40A.(g)
✓ Health Information Systems Development Funds	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 10.59A.(b)
✓ Maternal and Child Health Block Grant	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by December 1, 2005	S.L. 2005-0276 § 5.1.(cc)
✓ Medicaid and Medicare Dual Eligibility Study	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by May 1, 2006	S.L. 2005-0276 § 10.21E.
✓ Medicaid Drugs, Limitation on Quantity	Shall report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Subcommittee on Health and Human Service and the Fiscal Research Division by May 1, 2006	S.L. 2005-0276 § 10.11.(a)(5)
✓ Medicaid Medical Policy Changes Less Than Three Million Dollars	Shall report to the Office of State Budget and Management and the Fiscal Research Division a quarterly report	S.L. 2005-0276 § 10.11.(v)

Health and Human Services, Department of – CONTINUED		
✓ Medicaid Personal Care Services Limitations	Shall report to 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 May 1, 2006	S.L. 2005-0276 § 10.19.(b)
✓ Medicaid Recipients, Expand Community Care of North Carolina Management to Additional	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2007	S.L. 2005-0276 § 10.17.(e)
✓ Medication Aides to Perform Technical Aspects of Medication Administration in Skilled Nursing Facilities, Use of (In cooperation with the North Carolina Board of Nursing)	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by March 1, 2006 and annually thereafter	S.L. 2005-0276 § 10.40C.(d)
✓ Medication Aides to Perform Technical Aspects of Medication Administration, DHHS and Community Colleges Study of	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Fiscal Research Division, the 2006 Regular Session of the 2005 General Assembly and the 2007 General Assembly upon its convening	S.L. 2005-0276 § 10.40D.(c)
✓ Mental Health Developmental Disabilities, and Substance Abuse Services Needs, Long-Term Plan for	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 10.24.(c)
✓ Mental Retardation Center Downsizing	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriation Subcommittee on Health and Human Services, and the Fiscal Research division on development of a plan by April 1, 2006 and a final plan by April 1, 2007. Shall report a progress report by January 15, 2006 and a final report by May 1, 2006.	S.L. 2005-0276 § 10.29.(c)(d)
✓ Minority Students into Pharmacy Schools, Funds for Pilot Program to Recruit	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 10.59B.
✓ More at Four Voluntary Prekindergarten Program (In cooperation with the Department of Public Instruction and the More At Four Pre-K Task Force)	Shall report to Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, 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 February 1, 2006	S.L. 2005-0276 § 10.67.(d)
✓ Multiply Diagnosed Adults, Services to	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health,	S.L. 2005-0276 § 10.26.(d)

	Developmental Disabilities, and Substance Abuse Services and the Fiscal Research Division on May 1, 2006 and May 1, 2007	
Health and Human Services, Department of – CONTINUED		
✓ North Carolina Families Accessing Services Through Technology (N.C. FAST)	Shall report on its compliance with this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2006	S.L. 2005-0276 § 5.1.(y)
✓ Preventive Health Services Block Grant	Shall report 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 no later than December 1, 2005	S.L. 2005-0276 § 5.1.(f)
✓ Provider Tracking Database System	If proposal is approved by the Office of State Budget and Management and the Office of Information Technology Services the department shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by May 1, 2006	S.L. 2005-0276 § 10.10A.
✓ Residential School Reporting	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by December 1, 2005	S.L. 2005-0276 § 10.52.
✓ Rural Hospital Operations	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 10.59H.
✓ School Nurses, Funds for	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by December 1, 2005	S.L. 2005-0276 § 10.53.(a)
✓ Special Assistance In-Home	Shall report to the co-chairs of the House of Representatives Appropriations Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, the co-chairs of the Senate Appropriations Committee, and the co-chairs of the Senate Appropriations Committee on Health and Human Services by January 1, 2006 and January 1, 2007	S.L. 2005-0276 § 10.39.(b)
✓ Special Children Adoption Fund	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services and the Fiscal Research Division by December 1, 2005 and June 30, 2006	S.L. 2005-0276 § 10.48.(c)
✓ State Psychiatric Hospitals, Transition Planning for	Shall report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the	S.L. 2005-0276 § 10.28.(d)

	Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and the Fiscal Research Division on December 1, 2005 and May 1, 2006	
Health and Human Services, Department of – CONTINUED		
✓ Temporary Assistance for Needy Families Block Grant (TANF)	Shall report on the uses of these funds no later than March 1, 2006, 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. Shall report on progress on compliance no later than March 1, 2006	S.L. 2005-0276 § 5.1.(p)(q)
✓ Vision Care Program Established, Governor's	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by May 1, 2006	S.L. 2005-0276 § 10.59F.(f)
✓ Work Central, Inc.	Evaluation report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services and the Fiscal Research Division by May 1, 2006	S.L. 2005-0276 § 5.1.(x)
House Finance Agency, North Carolina		
✓ HOME Matching Funds Program Report	Shall report to the Joint Legislative Commission on Governmental Operations by April 1 of each year	S.L. 2005-0276 § 20.1.(a)
✓ Home Protection Pilot Program and Loan Fund	Report to the Chairs of the Senate and House of Representatives Appropriations Committees by April 1, 2006	S.L. 2005-0276 § 20.2.(a)(6)
Humanities Council, North Carolina		
✓ Program Activities, Objectives, Accomplishments, and Expenditures Report	Shall report to the Joint Legislative Commission on Government Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 24.1.
Indigent Defense Services, Office of		
✓ Annual Report of Activities With Recommendations	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by March 1 of each year	S.L. 2005-0276 § 14.12.

Indigent Defense Services, Office of – CONTINUED		
✓ Prisoner Legal Services, Inc. Evaluation Report	Shall report to the Senate and House of Representatives Appropriations Committees and the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety a interim report by May 1, 2006 and a final report by May 1, 2007	S.L. 2005-0276 § 14.9.(b)
✓ North Carolina State Bar Grant-In-Aid for the Center for Death Penalty Litigation	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1, 2006	S.L. 2005-0276 § 14.8.
Industrial Commission		
✓ Study Alternate Funding, Report and Recommendations (In Cooperation with the Department of Commerce)	Shall report to House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Office of State Budget and Management and the Fiscal Research Division by April 1, 2006	S.L. 2005-0276 § 13.6A.
Information Technology Services, Office of		
✓ Findings and Recommendations	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by January 31, 2006	S.L. 2005-0276 § 10.1.(a)
Judicial Department		
✓ Electronic Payment Study	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006	S.L. 2005-0276 § 14.5.
✓ Federal Grant Reporting (In cooperation with the Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety and the Department of Juvenile Justice and Delinquency Prevention)	Shall report to the Joint Legislative Commission on Government Operations, the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by May 1 of each year	S.L. 2005-0276 § 17.1.
✓ Worthless Checks, Collection of Funds	Shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Subcommittee on Justice and Public Safety on June 30, 2005 for the purchase of equipment during the 2005-2006 fiscal year	S.L. 2005-0276 § 14.3.

Justice, Department of		
✓ Criminal Record Checks Conducted for Concealed Handgun Permits, Report on	Shall report to Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by January 15 of each year	S.L. 2005-0276 § 15.5.(a)
✓ Federal Grant Reporting (In cooperation with the Department of Correction, the Department of Crime Control and Public Safety, the Judicial Department and the Department of Juvenile Justice and Delinquency Prevention)	Shall report to the Joint Legislative Commission on Government Operations, the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by May 1 of each year	S.L. 2005-0276 § 17.1.
✓ Fingerprint System Replacement, Statewide Automated (In cooperation with Criminal Justice Information Network)	Shall report to the Joint Legislative Commission on Governmental Operation's Subcommittee for Justice and Public Safety by November 1, 2005	S.L. 2005-0276 § 15.9.(b)
✓ Rape Kits, Number Analyzed and Reduce the Backlog of	Shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by February 1, 2006 and annually thereafter	S.L. 2005-0276 § 15.7.(b)
Juvenile Assessment Center		
✓ Report of Activities and Operations	Report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 or each year	S.L. 2005-0276 § 16.3.(b)
Juvenile Justice and Delinquency Prevention, Department of		
✓ Community Programs, Annual Evaluation of	Shall report to the Chairs of the House of Representatives and Senate Appropriation Committees, Chairs of the House of Representatives and Senate Appropriations Subcommittee on Justice and Public Safety by March 1 of each year	S.L. 2005-0276 § 16.4.
✓ Federal Grant Reporting (In cooperation with the Department of Correction, the Department of Justice, the Judicial Department and the Department of Crime Control and Public Safety)	Shall report to the Joint Legislative Commission on Government Operations, the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety, by May 1 of each year	S.L. 2005-0276 § 17.1.
✓ Gang Violence, JCPC Grants to Prevent	Shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the Appropriations	S.L. 2005-0276 § 16.8.(b)

Juvenile Justice and Delinquency Prevention, Department of - CONTINUED	Subcommittees on Justice and Public Safety of the House of Representatives and the Senate by April 1, 2006	
✓ JCPC Grant Reporting and Certification	Shall report to the Joint Legislative Commission on Governmental Operations, the Senate and House of Representatives Appropriations Committees and the Fiscal Research Division by May 1 of each year	S.L. 2005-0276 § 16.2.(a)
✓ Juvenile Commitment, Alternatives to	Shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by March 1, 2006 and annually thereafter. The 2007 report and all annual reports thereafter shall also include projects funded by this section for the 2005-2006 fiscal year.	S.L. 2005-0276 § 16.11.(c)
✓ Juvenile Crime Prevention Councils, Implementation and Awards	Shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by March 1, 2006	S.L. 2005-0276 § 16.11.(b)
✓ Youth Development Centers, Capital Projects, Progress Reports on	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and to the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee each December 31, March 31, June 30, and September 30 of the 2005-2007 biennium	S.L. 2005-0276 § 16.7.
✓ Youth Development Centers, Implementation of Treatment Staffing Model at	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Juvenile Justice Oversight Committee on December 31, 2005, and quarterly thereafter during the 2005-2007 biennium	S.L. 2005-0276 § 16.6.(a)(b)
Land Loss Prevention Project		
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)
Legal Education Assistance Foundation, North Carolina		
✓ Report of Activities, Expenditures, and Funds Disbursed	Report to the Joint Legislative Commission on Governmental Operations by March 1 of each year	S.L. 2005-0276 § 15.6.

Legislative Research Commission		
✓ **Area Health Education Centers**, Availability of the Horace Williams Airport at UNC-CH	Shall report to the 2005 Regular Session of General Assembly prior to the convening of the 2006 Session	S.L. 2005-0276 § 9.15.
✓ **School-Based and School-Linked Health Centers**	Shall make an interim report to the 2006 Regular Session of the 2005 General Assembly and a final report to the 2007 General Assembly upon its convening	S.L. 2005-0276 § 59G.(b)
Mental Health, Developmental Disabilities and Substance Abuse Services, Joint Legislative Oversight Committee on		
✓ Medicaid Recipients Medications; Restrictions on	May report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before April 30, 2006	S.L. 2005-0276 § 10.11.(y)
✓ Oversight and Monitoring by Department of Health and Human Services of Services to Mental Health Consumers	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by April 1, 2006	S.L. 2005-0276 § 10.34.
Minority Economic Development, The North Carolina Institute for		
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)
Minority Support Center, North Carolina		
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)

More At Four Pre-K Task Force		
✓ More at Four Voluntary Prekindergarten Program (In cooperation with the Department of Health and Human Services and the Department of Public Instruction)	Shall report to Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, 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 February 1, 2006	S.L. 2005-0276 § 7.67.(b)
North Carolina Partnership for Children, Inc.		
✓ Early Childhood Education and Development Initiatives Enhancements	Shall report to the Joint Legislative Commission on Governmental Operations	S.L. 2005-0276 § 10.64.(c)
✓ Smart Start Funding Study	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 10.65.(b)
Nursing, North Carolina Board of		
✓ Medication Aides to Perform Technical Aspects of Medication Administration in Skilled Nursing Facilities, Use of (In cooperation with the Department of Health and Human Services)	Shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by March 1, 2006 and annually thereafter	S.L. 2005-0276 § 10.40C.(d)
Opportunities Industrialization Centers		
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)
Partnership of the Sounds, Inc.		
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)

Post-Release Supervision and Parole Commission		
✓ Inmates Eligible for Parole	Shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by January 15 and July 15 of each year	S.L. 2005-0276 § 17.24.
✓ Parole Eligibility Report	Shall report an analysis to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005 and report by February 1, 2006 regarding the number of parole-eligible inmates reconsidered and those who were actually paroled	S.L. 2005-0276 § 17.28.(c)
✓ Staffing Reorganization and Reduction, Report on	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by October 1 of each year	S.L. 2005-0276 § 17.26.
Project Challenge North Carolina, Inc.		
✓ Report of Activities and Operations	Report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 or each year	S.L. 2005-0276 § 16.3.(a)
Public Instruction, Department of		
✓ More at Four Voluntary Prekindergarten Program (In cooperation with the Department of Health and Human Services and the More At Four Pre-K Task Force)	Shall report to Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, 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 February 1, 2006	S.L. 2005-0276 § 7.67.(b)
✓ School Transportation, Study of	Shall report to the State Board of Education by December 1, 2005. The State Board of Education shall submit a implementation plan to the Joint Legislative Education Oversight Committee by March 15, 2006	S.L. 2005-0276 § 7.57.
Secretary of State		
✓ Reassignment of Vacant Position	Shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on General Government by December 1, 2005.	S.L. 2005-0276 § 23.1.

Regional Economic Development Commissions		
✓ Annual Report of Activities	Shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by February 13 of each fiscal year	S.L. 2005-0276 § 13.8.(a)
Revenue, Department of		
✓ Collection Efforts, Report on Enhanced Compliance, Enforcement	Shall report to the Joint Legislative Commission on Government Operations and the Revenue Laws Study Committee by April 1, 2006	S.L. 2005-0276 § 22.4.
✓ LEA Sales Tax Refund Reporting	Shall report annually to the Department of Instruction and the Fiscal Research Division by March 1	S.L. 2005-0276 § 7.27.(a)
✓ Overdue Tax Debts, Use of Fee Proceeds	Shall report to the Revenue Laws Study Committee and the Fiscal Research Division by April 1, 2006 and annually thereafter	S.L. 2005-0276 § 22.1.(b)
✓ Tax Debts Report, Effort to Collect	Shall report semiannually to the Joint Legislative Commission on Government Operations and the Revenue Laws Study Committee	S.L. 2005-0276 § 22.1.(b)
Revenue Laws Study Committee		
✓ Cable, Satellite, and Video Programming, Taxation of	May submit an interim report to the 2006 Regular Session of the 2005 General Assembly and may submit a final report to the 2007 General Assembly	S.L. 2005-0276 § 33.32.(2)
✓ Maintenance Agreements, Application of Sales and Use Tax to	May submit an interim report to the 2006 Regular Session of the 2005 General Assembly and may submit a final report to the 2007 General Assembly	S.L. 2005-0276 § 33.32.(1)
Rural Economic Development Center		
✓ Economic Infrastructure Program, North Carolina	Shall report to the Joint Legislative Commission on Governmental Operations by January 15 of each year	S.L. 2005-0276 § 13.12.(e)
✓ Regional Education Networks, Feasibility Study for Developing (In cooperation with e-NC Authority)	Shall report to the 2006 Regular Session of the 2005 General Assembly	S.L. 2005-0276 § 7.42.
✓ Report of Activities and Expenditures	Report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2006 and January 15, 2007 and more frequently if requested	S.L. 2005-0276 § 13.9.(a)

School Readiness Study Group, Office of		
✓ Findings and Recommendations	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 10.68.(d)
Sentencing and Policy Advisory Commission, North Carolina		
✓ Juvenile Recidivism Biennium Report	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2006	S.L. 2005-0276 § 14.19.(b)
✓ Juvenile Recidivism Report, First	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2007, and future reports shall be made by May 1 of each odd-numbered year	S.L. 2005-0276 § 14.19.(a)
State Auditor, Office of		
✓ Child Caring Institutions	Shall report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services and the Fiscal Research Division by May 1, 2006	S.L. 2005-0276 § 10.47.(a)
State Budget and Management, Office of		
✓ Advanced Vehicle Research Center Reserve Funds	Shall report to the Governor, the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by December 31, 2005 and April 30, 2006	S.L. 2005-0276 § 13.8A.(d)
✓ Criminal Record Checks, Study Feed Adjustment for	Shall report the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 15.5.(b)
✓ Distance Education, Study of	Shall report to the Joint Legislative Education Oversight Committee by April 30, 2006	S.L. 2005-0276 § 9.7.

State Budget and Management, Office of – CONTINUED		
✓ DNA Testing and Analysis Costs, Study of	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees, the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Fiscal Research Division by March 1, 2006	S.L. 2005-0276 § 15.8.
✓ Dot Fee Increases	Shall report to the North Carolina General Assembly annually	S.L. 2005-0276 § 44.1.(a)
✓ Infrastructure Information, Planning for Collection of	Shall report to the 2006 Regular Session of the 2005 General Assembly	S.L. 2005-0276 § 6.33
✓ Maintenance Contracts Report, Multiyear	Shall report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Fiscal Research Division annually by May 1	S.L. 2005-0276 § 20A.1.(c)
✓ Overhead Cost Recovery	Shall report its recommendations to the Chairs of the Senate Committee on Appropriations/Base Budget, the Chairs of the House of Representatives Committee on Appropriations, and the Fiscal Research Division by April 1, 2006	S.L. 2005-0276 § 6.6.
✓ Personnel Service Contracts (In cooperation with Office of State Personnel)	Shall report to the Joint Legislative Commission on Governmental Operations by March 15 of each year	S.L. 2005-0276 § 6.38.
✓ State Grant Recipients	Shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by May 1, 2007 and by May1 of every succeeding year	S.L. 2005-0276 § 6.9.
✓ State Laboratories, Study Consolidation of	Shall report to the General Assembly and the Fiscal Research Division by May 1, 2006	S.L. 2005-0276 § 6.36.
State Education Assistance Authority		
✓ Physical Education – Coaching Scholarship Loans	Shall report annually to the Joint Legislative Education Oversight Committee by March 1	S.L. 2005-0276 § 9.31.
State Highway Patrol, North Carolina		
✓ Motor Carrier Enforcement Activities	Shall report to the Joint Legislative Transportation Oversight Committee by August 1, 2006	S.L. 2005-0276 § 28.24.(b)
✓ Weight-In-Motion Data and Periodic Summaries	Shall report to the Joint Legislative Transportation Oversight Committee by August 1, 2006	S.L. 2005-0276 § 28.25.(b)

State Personnel, Office of		
✓ Personnel Service Contracts (In cooperation with Office of State Budget and Management)	Shall report to the Joint Legislative Commission on Governmental Operations by March 15 of each year	S.L. 2005-0276 § 6.38.
State Treasurer, Department of		
✓ Staffing Analysis Follow-Up	Shall report to the Office of State Budget and Management and the Fiscal Research Division on a quarterly basis	S.L. 2005-0276 § 27.2.(b)
✓ State Investment Officer Position Incentive Bonus, Treasurer Report on	Shall report to the Joint Legislative Commission on Governmental Operations by October 1 of each year	S.L. 2005-0276 § 27.3.
✓ Technology Infrastructure Enhancements, Report of the Status of the	Shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Senate and House of Representatives Appropriations Committees semiannually by October 1 and April 1	S.L. 2005-0276 § 27.1.
Summit House		
✓ Nonprofit Program Report	Shall report to the Joint Legislative Commission on Governmental Operations by February 1 of each year	S.L. 2005-0276 § 17.22.(b)
Transportation, Department of		
✓ Incentive Pay Pilot Program, Reorganization of Department of Transportation	Shall report to the Joint Legislative Transportation Oversight Committee by March 30, 2006	S.L. 2005-0276 § 28.11.(f)
✓ Moving Ahead Projects	Shall report to the Joint Legislative Transportation Oversight Committee by October 1, 2005 and shall report to the Joint Transportation Appropriations Subcommittee by May 1, 2006	S.L. 2005-0276 § 28.23.(d)
✓ Online Dealer Registration Enhancement, Study (Division of Motor Vehicles)	Shall report to the Joint Legislative Transportation Oversight Committee not less than 30 days prior to any expenditure being made and no expenditure shall be made before November 1, 2005	S.L. 2005-0276 § 28.22.(b)
✓ Port Development and Rail Services, Preliminary Assessment of (Rail Division)	Shall Report to the Joint Legislative Transportation Oversight Committee before May 1, 2006	S.L. 2005-0276 § 28.26.(b)

Transportation, Department of – CONTINUED		
✓ Small Construction and Contingency Funds Projects	Shall report to the Members of the General Assembly on projects funded pursuant to this section in each member's district prior to the Board of Transportation's action. DOT shall report a quarterly comprehensive report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division	S.L. 2005-0276 § 28.4.
✓ Stormwater Pilot Project, Report on	Shall report to the Joint Legislative Transportation Oversight Committee by August 1, 2005	S.L. 2005-0276 § 28.19.
✓ Trade Shows, Transportation Services For	Shall report to the Joint Legislative Transportation Oversight Committee annually or by March 1	S.L. 2005-0276 § 28.2.
Tryon Palace Commission		
✓ Tryon Palace Historic Sites and Gardens Fund Report	Shall report to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on General Government and the Fiscal Research Division by September 30 of each year	S.L. 2005-0276 § 19A.1.
University of North Carolina		
✓ Teacher Education and Recruitment, UNC-NCCCS Joint Initiative for	Shall report to the State Board of Education, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, the Education Cabinet, the Joint Legislative Education Oversight Committee, and the Office of State Budget and Management by September 1, 2006, and annually thereafter	S.L. 2005-0276 § 9.3.(c)
University of North Carolina Board of Governors		
✓ Academic Common Market Program	Shall report to the Joint Legislative Education Oversight Committee by September 2007 and each biennium thereafter	S.L. 2005-0276 § 9.24.
✓ Higher Education Strategy/Amend Reporting Requirement, Joint Study of (In cooperation with the State Board of Community Colleges)	Shall report to the General Assembly and the Joint Legislative Education Oversight Committee by June 15, 2005, and shall submit a final report by December 31, 2006	S.L. 2005-0276 § 9.18.
✓ Partnerships for New 2+2 Programs, Encourage (In cooperation with the State Board of Community Colleges)	Shall report to the Joint Legislative Education Oversight Committee by February 1, 2006	S.L. 2005-0276 § 9.2.(b)

University of North Carolina Board of Governors – CONTINUED		
✓ School Administrator Training Programs	Shall report annually to the Joint Legislative Education Oversight Committee by March 1	S.L. 2005-0276 § 9.23.
✓ Teacher Scholarship Funds	Shall report annually to the Joint Legislative Education Oversight Committee by March 1	S.L. 2005-0276 § 9.11.(a)
✓ Tuition Waiver Program Expansion (In cooperation with the State Board of Community Colleges)	Shall report to the Joint Legislative Education Oversight Committee by April 1, 2006	S.L. 2005-0276 § 9.11.(a)
University of North Carolina Office of the President		
✓ Enrollment Growth Fund	Shall report a plan to the Office of State Budget and Management and the Joint Legislative Education Oversight Committee by December 20, 2005. Shall submit a progress report for the 2006-2007 academic year by March 31, 2006	S.L. 2005-0276 § 7.2.(a)
Wireless 911 Board		
✓ Audit Report **CREATED**	Shall report any findings and recommendations upon the convening of the 2006 Regular Session of the 2005 General Assembly and upon the convening of the 2007 General Assembly	S.L. 2005-0439 § 11.(b).
Women at Risk		
✓ Nonprofit Program Report	Shall report to the Joint Legislative Commission on Governmental Operations by February 1 of each year	S.L. 2005-0276 § 17.22.(c)
Worker's Compensation Benefits, Committee on		
✓ Interim and Final Reports **CREATED**	Shall report to the 2006 Regular Session of the 2005 General Assembly upon its convening. Progress and final reports of the Commission may include recommended legislation. The Committee shall terminate upon the convening of the 2007 General Assembly	S.L. 2005-0448 § 1.(d). 11-8-05

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