

SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION - 2008

SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

2007 GENERAL ASSEMBLY
2008 EXTRA SESSION
2008 REGULAR SESSION
2008 RECONVENED SESSION



RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
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To the Members of the 2008 Session of the 2007 General Assembly:

This publication contains summaries of all substantive legislation of general applicability and certain local legislation having general import from the 2008 Regular Session. Most local acts are not analyzed in this publication. Significant appropriations matters related to the subject area specified are also included. For an indepth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also includes a listing of legislative, independent, and agency studies. A bill/session law index listing the page number of each summary is at the end of the publication.

This document is the result of a combined effort by the following staff members of the Research Division: Dee Atkinson, Cindy Avrette, Susan Barham, Drupti Chauhan, Erika Churchill, Karen Cochrane-Brown, Judy Collier, Heather Fennell, Bill Gilkeson, George Givens, Trina Griffin, Tim Hovis, Jeff Hudson, Denise Huntley, Shirley Iorio, Sara Kamprath, Mariah Matheson, Theresa Matula, Kara McCraw, Jennifer McGinnis, Joe Moore, Jennifer Mundt, Shawn Parker, Howard Alan Pell, Giles S. Perry, Ben Popkin, Wendy Graf Ray, Walker Reagan, Barbara Riley, Steve Rose, and Susan Sitze. Brad Krehely is chief editor of this year's publication, and Brenda Carter is co-editor. 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 also is available on the Internet. Go to the General Assembly's homepage at <http://www.ncleg.net>. Click on "Legislative Publications," then "Research Division," then "Summaries of Substantive Ratified Legislation." Each summary is hyperlinked to the final bill text, the bill history, and any applicable fiscal note.

I hope 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,



Kory J. Goldsmith
Interim Director of Research

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Chapter 1
Agriculture and Wildlife

Erika Churchill (EC), Barbara Riley (BR)

Enacted Legislation

Disapprove Dyed Milk Rule

S.L. 2008-88 (HB 2524) specifically disapproves the rule adopted by the Board of Agriculture and approved by the Rules Review Commission that would have required raw milk dispensed as animal feed to contain a charcoal dye.

The act also requires that raw milk or raw milk products dispensed as animal feed must include the statement "NOT FOR HUMAN CONSUMPTION" in letters at least one-half inch in height on the product's label. The label also must contain the statement "IT IS NOT LEGAL TO SELL RAW MILK FOR HUMAN CONSUMPTION IN NORTH CAROLINA." The Board of Agriculture also is authorized to exempt unpasteurized milk from the definition of commercial feed under the North Carolina Commercial Feed Law.

This act became effective July 11, 2008. (BR)

Interstate Wildlife Violator Compact

S.L. 2008-120 (SB 175) authorizes and directs the Governor to execute the Interstate Wildlife Violator Compact (Compact) on behalf of the State with any state of the United States that has legally joined the Compact. As of June 2008, 28 states have entered into the Compact. The purpose of the Compact is to provide a means through which the party states may participate in a reciprocal program to promote compliance with statutes and regulations relating to wildlife resource management in the party states.

Under the provisions of the Compact, wildlife officers must issue citations to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state. The person will not be required to post collateral to secure appearance if the officer receives the person's personal recognizance (an agreement that the person will comply with the terms of the citation). Personal recognizance is acceptable if it is not prohibited by local law or the compact manual and if the violator provides adequate proof of identification to the wildlife officer.

Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official must report the conviction or failure to comply with the licensing authority of the party state in which the citation was issued. The licensing authority of the issuing state must transmit this information to the licensing authority in the home state of the violator.

Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state must notify the violator, initiate a suspension action in accordance with the home state's suspension procedures, and suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the citation has been furnished by the issuing state to the home state licensing authority.

Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state must enter the conviction into record and treat the conviction as though it occurred in the home state. The home state must maintain a record of all actions taken and make reports to issuing states as required in the compact manual.

All party states must recognize the suspension of license privileges of any person by any state as if the violation had occurred in their state and could have been the basis for suspension of license privileges in their state.

The act also authorizes the Chair of the Wildlife Resources Commission to appoint the Compact Administrator for North Carolina. It further provides that the Wildlife Resources Commission (WRC) may suspend or revoke the license, privilege, or right of any person to hunt, fish, trap, possess, or transport wildlife in North Carolina to the extent that the license, privilege, or right has been suspended or revoked by another compact member under the Compact and directs the WRC to adopt rules necessary to carry out the purposes of the Compact. Any proposed amendment to the Compact must be submitted to the General Assembly and enacted into law in order to be endorsed by the State.

The act makes it unlawful for a person whose license, privilege, or right to hunt, fish, trap, possess, or transport wildlife has been suspended or revoked under the Compact to exercise that right to hunt, fish, trap, possess, or transport wildlife within North Carolina. A person in violation of a suspension or revocation under the Compact would be guilty of a Class 1 misdemeanor.

This act becomes effective October 1, 2008. (BR)

Hunting on Private Property in Orange County

S.L. 2008-205 (HB 2768) amends the law prohibiting hunting and fishing on another person's private property in Orange County without the written permission of the landowner or lessee to provide that a person is deemed to have written permission for purposes of hunting, if the landowner has granted permission to a hunting club to hunt or fish on the property and the person is carrying both a current membership card for the hunting club and a copy of valid written permission granted to the hunting club. This provision becomes effective October 1, 2008.

The act also amends the eligibility requirements of the Disabled Sportsman Program to allow holders of Resident Disabled Veteran or Resident Totally Disabled licenses to participate in the Program without requiring them to provide competent medical evidence of a listed disability. The act increases the application fee from \$5 to \$10. The fee for each application is \$10. However, one application may be submitted for multiple hunts sponsored by the program. This provision became effective July 1, 2008. (EC)

Prevent Agricultural Pesticide Exposure

S.L. 2008-212, Sec. 2 (SB 847, Sec. 2) requires the Pesticide Board to adopt rules to implement the recommendations of the Governor's Task Force on Preventing Agricultural Pesticide Exposure, requiring recording of the specific time of day when each pesticide application was completed, and extending the retention period for pesticide application records for all pesticides covered under the Worker Protection Standards for Agricultural Pesticides from 30 days to 2 years.

This section became effective August 11, 2008. (EC)

Studies

Agriculture Research Stations

S.L. 2008-107, Sec. 9.13 (HB 2436, Sec. 9.13) directs the deans of the College of Agriculture and Life Sciences at North Carolina State University (NCSU) and the School of Agriculture at North Carolina Agricultural and Technical State University (North Carolina A & T

State University), together with the Commissioner of Agriculture, to jointly study and develop a comprehensive strategic plan for the management of the agricultural research stations that are managed jointly by NCSU and the Department of Agriculture and Consumer Services and the university research farm managed by North Carolina A & T State University. The plan is to be submitted to the Chairs of the House Agriculture Committee, the Senate Agriculture, Environment, and Natural Resources Committee, and the House and Senate Appropriations Subcommittees on Natural and Economic Resources no later than December 31, 2008.

This section became effective July 1, 2008. (BR)

Study Certain Department of Agriculture and Consumer Services Fees

S.L. 2008-107, Sec. 11.1 (HB 2436, Sec. 11.1) requires the Department of Agriculture and Consumer Services (Department), in consultation with the Office of State Budget and Management and the Fiscal Research Division, to study all of the following:

- (1) The feasibility and advisability of increasing the fees imposed either by the Board of Agriculture or the Department regarding services provided by the Rollins Laboratory System.
- (2) The feasibility and advisability of establishing fees for soil testing services provided by the Agronomics Division of the Department.
- (3) The feasibility and advisability of using alternative sources of funding for the "Agricultural Review," an agriculture newsletter published by the Department, including charging fees for advertisements or classified advertisements and soliciting private sponsors for the newsletter.

The results of the study must be reported, no later than March 1, 2009, to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources.

This section became effective July 1, 2008. (EC)

Study Mandatory Boating Safety Education

S.L. 2008-181, Sec. 2.2 (HB 2431, Sec. 2.2) provides that the Legislative Research Commission may study the feasibility of implementing mandatory boating education in the State. As a part of the study, the Commission must evaluate the feasibility of requiring all persons to satisfy a boating education requirement prior to operating a motorboat or personal watercraft.

This section became effective August 4, 2008. (BR)

Chapter 2
Alcoholic Beverage Control

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Enacted Legislation

Nonprofit Alcoholic Beverage Control Law Changes

S.L. 2008-159 (HB 1230) amends the law concerning special one-time ABC permits for nonprofit organizations. The act authorizes the issuance of a permit that will allow the sale of mixed beverages at a single fund-raising event of a nonprofit organization in jurisdictions where the sale of mixed beverages is legal.

This act became effective August 3, 2008. (BC)

Clarify Recycling Law

S.L. 2008-187, Sec. 35.5 (SB 1632, Sec. 35.5) amends the law that requires all holders of on-premises ABC permits to recycle beverage containers. This section makes it clear that failure to comply with the recycling requirement is not an offense that would make a person ineligible to receive and to hold an ABC permit.

This section became effective August 7, 2008. (BC)

Chapter 3 Children and Families

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Enacted Legislation

Domestic Violence Victim Assistance

S.L. 2008-4 (HB 2189) requires law enforcement agencies to provide domestic violence assistance information to victims of domestic violence. Under the Crime Victims' Rights Act (CVR Act), law enforcement agencies are required to provide certain information to victims. This act provides that, if a law enforcement agency must provide information under the CVR Act, and the victim and the accused have a personal relationship, then the information provided must include the informational sheet that is provided to applicants for a domestic violence protective order when the order is issued. The sheet contains the following information:

- Domestic violence agencies and services.
- Sexual assault agencies and services.
- Victims' compensation services.
- Legal aid services.
- Address confidentiality services.
- An explanation of the plaintiff's right to apply for a concealed handgun permit.

The act also directs the North Carolina Domestic Violence Commission, in consultation with the North Carolina Coalition Against Domestic Violence, the North Carolina Attorney General's Office, and the Governor's Crime Commission, to study the adoption of a Statewide automated victim notification system for persons who have received a domestic violence protective order. The North Carolina Domestic Violence Commission will report the results of its study and any recommendations to the Joint Legislative Committee on Domestic Violence and the General Assembly on or before January 1, 2009.

This act became effective July 1, 2008. (WGR)

Domestic Violence Orders/Repeat Violators

S.L. 2008-93 (HB 44) reduces the number of prior violations of a domestic violence protective order required for charging a violation as a felony. Prior to this act, a person was required to have three prior convictions for violating a domestic violence protective order (a Class A1 misdemeanor) before the person could be charged with a felony for a fourth violation. This act reduces the number of prior violations required from three to two so that a person can be charged with a Class H felony upon the third violation of a protective order.

This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. Offenses committed before that date count in determining the total number of prior offenses. (WGR)

Allow Smart Start to Retain Unexpended Funds

S.L. 2008-123 (HB 685) amends the 2007 Appropriations Act by providing that funds appropriated to the Department of Health and Human Services, Division of Child Development, for the North Carolina Partnership for Children, Inc., and allocated to local partnerships for 2007-2008, that are unexpended remain available to the North Carolina Partnership for Children, Inc., to reallocate to local partnerships. The act also amends North Carolina statutory law to provide

that State funds that are allocated to local partnerships and are unexpended at the end of a fiscal year remain available to the North Carolina Partnership for Children, Inc., to reallocate to local partnerships.

This act became effective July 1, 2008. (WGR)

Local Park and Recreation Program Participant Records

S.L. 2008-126 ([SB 212](#)). See **Local Government**.

Child Passenger Safety Technician Liability

S.L. 2008-178 ([HB 2341](#)). See **Civil Law and Procedure**.

Hospital Report Child Injuries

S.L. 2008-179 ([HB 2338](#)). See **Health and Human Services**.

Transporting Children in Open Bed of Vehicle

S.L. 2008-216 ([HB 2340](#)). See **Transportation**.

Studies

Domestic Violence Victim Assistance

S.L. 2008-4 ([HB 2189](#)). See this chapter under **Enacted Legislation**.

Standards Applied in Disputed Custody Cases

S.L. 2008-181, Sec. 2.7 ([HB 2431](#), Sec. 2.7) authorizes the Legislative Research Commission to study the standards applied in disputed custody cases and the need for any modification of those standards, including the possible adoption of a presumption of joint custody in some or all cases.

This section became effective August 4, 2008. (WGR)

Chapter 4

Civil Law and Procedure

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Enacted Legislation

Service of Process/Electronic or Fax Receipt

S.L. 2008-36 (HB 2287) amends Rule 4(j) of the Rules of Civil Procedure to recognize the use of electronic or facsimile proof of delivery receipts when service of process is provided by a designated delivery service such as Federal Express or United Parcel Service. The act makes the following changes:

- Includes an electronic or facsimile receipt in the definition of "delivery receipt."
- Clarifies that the term "delivery receipt" does not mean a receipt provided solely by the United States Postal Service.
- Clarifies that service by electronic mailing remains prohibited.
- Authorizes the use of a facsimile delivery receipt or printout of an electronic delivery receipt to prove service of process by a designated delivery service. (Previously, only a "genuine receipt" was allowed).

This act becomes effective October 1, 2008, and applies to receipts given on or after that date. (TH)

Procedure for Tax Class Actions

S.L. 2008-107, Sec. 28.28 (HB 2436, Sec. 28.28) establishes a procedure for taxpayers seeking to initiate or join a class action in order to obtain a refund of tax paid under an allegedly unconstitutional statute. The purpose of the act is to identify and protect the potential liability of the State for tax refunds and to give taxpayers, the Department of Revenue (Department), and practitioners clear guidance as to the proper procedure governing tax-related class actions.

Authority. - Effective January 1, 2008, a new statute governs the conditions under which a civil action may be initiated by a taxpayer for the refund of a tax based on the alleged unconstitutionality of a statute. However, this statute is silent with regard to class actions. This section provides specific statutory authority for tax class actions which may be brought only on the grounds of an alleged unconstitutional statute.

Bringing a Tax Class Action. - A taxpayer who wishes to commence a class action challenging the constitutionality of a tax statute and who seeks to represent the class must meet certain requirements. In addition to meeting the requirements to bring an action for a refund of an unconstitutional tax and complying with any requirements under Rule 23 of the North Carolina Rules of Civil Procedure for a class action, this section adds a new requirement for bringing a tax class action. The taxpayer's claims must be typical of the claims of the class members in order for the taxpayer to serve as the class representative under Rule 23 of the Federal Rules of Civil Procedure.

Joining a Tax Class Action. - In order to become a member of a tax class action, a taxpayer must (1) be eligible and (2) affirmatively elect to participate as a member of the class.

- **Eligibility.** - A taxpayer is eligible to become a member of the class if the taxpayer could have filed a claim for refund as of the date the class action was commenced, or as of a subsequent date set by the court, whether or not the person actually filed a claim. For purposes of determining this eligibility, a class

action "commences" upon the later of the date a complaint is filed alleging the existence of a class or the date a complaint is amended to allege the existence of a class.

- **Affirmative Election.** - An eligible taxpayer becomes a member of a class by affirmatively indicating a desire to be included in the class in response to a notice of the class action. A taxpayer who joins a class is not required to exhaust the administrative review process; only the class representative must do so.

Procedure. - The procedure for notifying potential class members, the content of the notice, and the method by which potential class members indicate a desire to be included in the class in response to the notice must be approved by the court. This procedure may include ordering the Department to provide the class representative with a list of names and last known addresses of all taxpayers who are readily determinable by the Department and are eligible to become a member of the class. The class representative must advance the costs of notification.

Statute of Limitations. - The general statute of limitations for obtaining a refund of overpayment of tax is the later of three years after the due date of the return or two years after payment of the tax. The statute of limitations for filing a claim for refund on the grounds of an unconstitutional statute is tolled for a taxpayer who is eligible to become a member of a class action. The tolling begins on the date the class action is commenced. For a taxpayer who does not join the class, the tolling ends when the taxpayer does not affirmatively indicate a desire to be included in the class as provided by the court. For a taxpayer who does join the class, the tolling ends when the court enters a final order that resolves the class action lawsuit.

Effect on Nonparticipating Taxpayers. - This section provides that the principles of claim preclusion and issue preclusion apply in tax class actions in the same manner in which they apply in class actions generally. It further specifies that if a final judgment on the merits is entered in a class action in favor of the class, the following applies to an eligible taxpayer who did not become a member of the class:

- The taxpayer is not entitled to share in any monetary relief awarded to the class.
- If the taxpayer has been assessed for failure to pay the tax at issue in the class action and the taxpayer has not paid the assessment, then the assessment is abated.
- The taxpayer is relieved of any future liability for the tax that is the subject of the class action.

This section becomes effective October 1, 2008, and applies to actions filed on or after that date. (TG)

Breach/Construction Contract Accrual Date

S.L. 2008-139 (HB 1284) amends G.S. 1-53(1) to provide that, unless otherwise provided by law, if the two-year statute of limitation would bar commencement of a cause of action against a local unit of government arising out of a contract to improve real property, an action may be brought within either of the following periods:

- No later than 90 days after substantial completion.
- No later than 90 days after termination of the contract, if the contract is terminated prior to substantial completion.

This act became effective July 28, 2008, and applies to actions filed on or after that date. It does not revive claims previously barred under G.S. 1-53(1). (SR)

State Tort Claims/Public Duty Doctrine

S.L. 2008-170 (HB 1113) amends the State Torts Claim Act to define when the State may assert the public duty doctrine as an affirmative defense to a tort claim action. The public duty doctrine provides that the State cannot be held liable for an individual plaintiff's injury resulting

from a State employee's breach of a duty owed to the general public rather than to the individual plaintiff.

The act permits the State to assert the affirmative public duty doctrine defense only against a claim of action arising from either a law enforcement officer's negligent failure to protect the claimant from the actions of another or an act of God, or where a State employee negligently failed to perform a health or safety inspection required by law that resulted in the injury to the claimant. Excepted from the permissible use of the affirmative defense of the public duty doctrine by the State are incidences where a special relationship exists between the claimant and the State employee, when the State has a special duty to the claimant and the claimant's reliance on that duty is causally related to the injury suffered, and the failure to perform a health or safety inspection required by law was the results of gross negligence.

The act does not limit the assertion of the public duty doctrine defense by a local government, or its officers, employees, or agents.

The definition of "law enforcement officer" includes State employees who are actively serving in a position primarily related to prevention and detection of crime or the general enforcement of the criminal laws, possess the power of arrest by virtue of being a sworn law enforcement officer, are a juvenile justice officer, chief court counselor, or juvenile court counselor, a correctional officer performing corrections duties, a firefighter, or a probation officer.

This act becomes effective October 1, 2008, and applies to claims arising on or after that date. (WR)

Child Passenger Safety Technician Liability

S.L. 2008-178 (HB 2341) limits liability for certified child passenger safety technicians and sponsoring organizations for acts or omissions in the inspection, installation, or adjustment of child safety seats or in providing education regarding the installation or adjustment of child safety seats. Current North Carolina law requires children less than 8 years of age and less than 80 pounds in weight to be properly secured in vehicles in a weight-appropriate child passenger restraint system. This act provides the following definitions:

- "Certified child passenger safety technician" - an individual who successfully completes and maintains certification through the National Child Passenger Safety Training Program.
- "Sponsoring organization" - a person or organization other than a manufacturer of child safety seats that offers or arranges a nonprofit child safety seat educational program or event using certified technicians or that owns property on which a nonprofit child safety seat educational program or event is held.

The act provides that a certified child passenger safety technician or sponsoring organization is not liable as a result of any act or omission occurring solely in the inspection, installation, or adjustment of a child safety seat, or in providing education regarding the installation or adjustment of a child safety seat if both of the following conditions are met:

- The certified technician or sponsoring organization acts in good faith and within the scope of the training for which the technician is currently certified.
- The service is provided without fee or charge other than reimbursement for expenses.

The limitation of liability does not apply if the act or omission constitutes willful and wanton misconduct or gross negligence, or if the service or education was provided in conjunction with the for-profit sale of a child safety seat.

This act becomes effective October 1, 2008, and applies to any cause of action arising on or after that date. (WGR)

Liability Protection for Private Entities

S.L. 2008-200 (SB 1766) provides liability protection to private entities responding to emergencies when the private entity is acting at the direction of State or local government in response to an officially declared emergency and without compensation. The protection is the same immunity provided to emergency workers.

The act provides immunity from liability for the death or injury of persons or for damage to property which occurs while the entity is complying with emergency management measures. The entity would have to be acting subject to the order or control of the State or local government. Unlike for an individual, the private entity would have to be performing services without compensation or with compensation limited to no more than actual expenses. The entity would have to be responding to an officially declared emergency.

The act clarifies that the immunity does not apply to an entity whose act or omission caused the emergency or necessitated the emergency management measures. It also provides that, as with volunteer immunity, the private entity waives immunity to the extent that the entity has liability insurance. It prohibits an insurer from excluding an entity from coverage under a liability policy for acts or omissions for which the entity would be liable only to the extent indemnified by insurance as provided in the act.

The act became effective August 8, 2008, and applies to any cause of action arising on or after that date and contract of insurance issued or renewed on or after that date. (BG)

Chapter 5

Commercial Law and Consumer Protection

Drupti Chauhan (DC), Karen Cochrane-Brown (KCB), Heather Fennell (HF), Denise Huntley (DH),
Steve Rose (SR), Tim Hovis (TH), Wendy Graf Ray (WGR), Walker Reagan (WR)

Enacted Legislation

Electronic Voting for Nonprofits

S.L. 2008-37 (HB 2178) amends the North Carolina Nonprofit Corporations Act to expressly permit nonprofit corporations incorporated in North Carolina to send notices to members and accept votes and proxies from members electronically. It allows nonprofit corporations to accept members' and directors' consents to action taken without meeting by electronic means and establishes the method by which nonprofit corporations may agree to conduct transactions by electronic means.

This act becomes effective October 1, 2008. (SR)

Disapprove Dyed Milk Rule

S.L. 2008-88 (HB 2524). See **Agriculture**.

Small Business Protection Act

S.L. 2008-107, Sec. 28.16 (HB 2436, Sec. 28.16). See **Finance**.

State Sales Tax Exemption for Baked Goods Sold By Artisan Bakeries

S.L. 2008-107, Sec. 28.19 (HB 2436, Sec. 28.19). See **Finance**.

Prohibit Tax on Interior Design Services

S.L. 2008-107, Sec. 28.20 (HB 2436, Sec. 28.20). See **Finance**.

Expand Film Industry Credit and Extend Sunset

S.L. 2008-107, Sec. 28.24 (HB 2436, Sec. 28.24). See **Finance**.

Prohibit Certain Game Promotion

S.L. 2008-122 (SB 180). See **Criminal Law and Procedure**.

Resale of Tickets via Internet

S.L. 2008-158 (SB 1407) allows admission tickets to be resold on the Internet at a price greater than the price printed on the face of the ticket. The act provides the following protections to the purchaser and to the venue:

- It requires a person who resells admission tickets online to provide a ticket guarantee that must be conspicuously displayed on the person's Website. A prospective purchaser must be directed to the ticket guarantee before completion of a resale transaction.
- The ticket guarantee must provide a purchaser with a full refund of the amount paid for the ticket if the event is cancelled, the purchaser is denied admission through no fault of the purchaser, or the ticket is not delivered to the purchaser and the failure to receive the ticket results in the purchaser's inability to attend the event. For a cancelled event, the seller may withhold handling and delivery fees from a refunded amount, if the Website informs the purchaser of this policy.
- A venue may prohibit a person from reselling tickets at a price greater than the price on the face of the ticket to an event it sponsors if it posts notice of the prohibition on its Website, on the Website of the primary ticket seller, and files a notice of the prohibition with the Secretary of State. A prohibition may not become valid until 30 days after the notice is posted on the venue's Website. The prohibition expires on December 31 of each year unless the venue renews its prohibition.

The act does not apply to student tickets issued by institutions of higher education in the State for sporting events. Persons who resell tickets must report to the Department of Revenue on a monthly basis. The report must cover the gross receipts received from reselling tickets and include information, such as the events and venues for the tickets, from whom the tickets were bought, and the name and address of the purchaser, if the purchaser is a reseller.

The act also makes it an unfair and deceptive trade practice for a person to knowingly sell, give, transfer, use, distribute, or possess software that is primarily designed or produced for the purpose of interfering with the operation of a ticket seller who, pursuant to a written agreement with the venue, sells admission tickets over the Internet. A ticket seller, as well as the venue, has standing to bring a private right of action under the Unfair and Deceptive Trade Practice Act. A person or firm is not liable with respect to tickets for which the person or firm is the original ticket seller.

This act became effective August 1, 2008, and expires on June 30, 2009. (DC)

Certified Retirement Community Program

S.L. 2008-188 ([SB 1627](#)) creates the North Carolina Retirement Community Program in the 21st Century Communities of the Department of Commerce to promote the State as a retirement destination. The Program will develop a scoring system to determine which North Carolina communities will qualify as certified retirement communities. Upon certification, the 21st Century Communities will provide staff training and marketing guidance for each community. Communities must seek re-certification every five years by reapplying for the program and submitting data demonstrating the program's effectiveness. The Department of Commerce and the Second Career Center of Robeson County will create a pilot program to implement the Program for the City of Lumberton.

The provisions of this act creating a pilot program in Robeson County become effective October 1, 2008; the remainder of this act becomes effective July 1, 2010. (HF)

Electronic Recycling Amends/Add Televisions

S.L. 2008-208 ([HB 819](#)). See **Environment and Natural Resources**.

Gasoline and Fuel Alcohol Blending

S.L. 2008-222 ([SB 1339](#)) adds a new section to the General Statutes that requires a supplier that imports gasoline to offer gasoline that is not pre-blended with fuel alcohol and that

is suitable for subsequent blending with fuel alcohol for sale to a distributor or retailer. It also would make void any provision in a contract that restricts or prevents a distributor or retailer from blending gasoline with fuel alcohol or from qualifying for any tax credit available to blenders. The act would not impair existing contracts, but would apply to contracts modified, amended, or renewed on or after the effective date.

This act became effective August 17, 2008. (TH)

Emergency Foreclosure Reduction Program

S.L. 2008-226 (HB 2623) creates an "Emergency Program to Reduce Home Foreclosures." The program establishes a system by which mortgage servicers are required to identify certain subprime loans that are in jeopardy of foreclosure. The servicer then must submit information on those loans to a database designed by the Commissioner of Banks and maintained by the Administrative Office of the Courts. The Commissioner of Banks would use the information to attempt to assist the parties to avoid foreclosure. The Commissioner also would be authorized to extend the foreclosure process for up to 30 days once in an appropriate case. The act also amends the 2008 Appropriations Act to direct that \$600,000 of the funds available to the State Banking Commission in the 2007-2008 fiscal year be used to make grants to nonprofit counseling agencies which help homeowners avoid home loss and foreclosure. It also directs \$400,000 in nonrecurring funds from the State Banking Commission to be used to implement the Emergency Home Foreclosure Reduction Program. The Commissioner of Banks must report to the General Assembly on the operation of the program by May 1.

The act becomes effective November 1, 2008, and expires October 31, 2010. (KCB)

Earlier Notification of Mortgage Servicer Fee

S.L. 2008-227 (HB 2188) amends the recently enacted Mortgage Debt Collection and Servicing Act to require that any fee incurred by a servicer be clearly explained to the borrower within 30 days after the fee is assessed and to clarify that the servicer is not required to send a statement to the borrower under certain circumstances. The act also clarifies that the servicer is not required to notify the borrower if a partial payment is accepted and credited in accordance with a written agreement. The act adds a conforming amendment to the Anti-Predatory Lending Act relating to compensation paid to a mortgage broker in the determination of whether a loan meets the definition of a "high cost home loan." Finally, the act amends the Mortgage Lending Act to prohibit mortgage lenders or brokers from receiving compensation that changes based on the terms of a subprime loan.

This act becomes effective October 1, 2008. (KCB)

Regulate Mortgage Servicers

S.L. 2008-228 (HB 2463) amends the Mortgage Lending Act to require the licensure and regulation of mortgage servicers by the Commissioner of Banks in a manner similar to what is currently applied to mortgage brokers and mortgage bankers. Persons currently engaged in the business of mortgage servicing are exempt from the act if they file with the Commissioner of Banks by October 1, 2008. The act also imposes some specific duties on mortgage servicers and adds to the list of prohibited acts certain acts specifically relating to mortgage servicers. The Commissioner of Banks is given authority to direct the Clerk of Superior Court to suspend a foreclosure proceeding for 60 days, if the Commissioner has evidence that there was a material violation of law in the origination or servicing of a loan. This provision becomes effective January 1, 2009, and applies to foreclosure proceedings filed on or after that date. Mortgage servicers who fail to obtain a license would be guilty of a Class 3 misdemeanor.

Except as otherwise provided, the act becomes effective January 1, 2009, and applies to anyone engaged in the business of mortgage servicing on or after that date. (KCB)

Studies

Homeowners Associations

S.L. 2008-181, Sec. 2.4 (HB 2431, Sec. 2.4) authorizes the Legislative Research Commission to study issues related to the protection and participation of homeowners in the governance of their homeowner associations, particularly as to assessments and record keeping of the associations.

This section became effective August 4, 2008. (KCB)

Improvements in Consumer Credit Reporting Practices

S.L. 2008-181, Sec. 2.6 (HB 2431, Sec. 2.6) authorizes the Legislative Research Commission to study improvements in consumer credit reporting practices, including the means to provide that credit histories reported by businesses and other credit reporting entities that have fewer than 500 customers or accounts are included as part of customer's consumer credit report or credit histories.

This section became effective August 4, 2008. (KCB)

Motorsports/Economic Impact

S.L. 2008-181, Sec. 2.9 (HB 2431, Sec. 2.9) authorizes the Legislative Research Commission to study the economic impact of motorsports, including drag, motorcycle, and automotive racing in North Carolina with an emphasis on Rockingham County.

This section became effective August 4, 2008. (KCB)

North Carolina Film Office of the Department of Commerce to Develop Plan to Create Film Production Facilities in the State

S.L. 2008-181, Part XXX (HB 2431, Part XXX) directs the North Carolina Film Office of the Department of Commerce, in consultation with the Film School of the North Carolina School of Arts and industry leaders, to develop a plan for the State to partner with the film industry to create production facilities in North Carolina. The Film Office is further directed to report to the Joint Legislative Commission on Governmental Operations on the plan by January 1, 2009.

This part became effective August 4, 2008. (KCB)

Chapter 6

Constitution and Elections

Erika Churchill (EC), Bill Gilkeson (BG), Kara McCraw (KM)

Note: For legislation affecting voting, the legislation cannot be implemented until it has received approval 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. The act cannot be implemented until Voting Rights Act approval is obtained.

Enacted Legislation

Election Law Amendments

S.L. 2008-150 (SB 1263) is an omnibus act that makes multiple changes to the elections laws as follows:

Joint Legislative Elections Oversight Committee. - The act creates the Joint Legislative Elections Oversight Committee (Committee).

- Membership - The Committee has 18 members, 9 from the Senate appointed by the President Pro Tempore and 9 from the House of Representatives appointed by the Speaker of the House. Members are appointed proportionally according to the partisan composition of their respective chambers and serve for two-year terms beginning on January 15 of odd-numbered years.
- Purpose and Powers - The Committee must examine election administration and campaign finance regulation in North Carolina and make recommendations to the General Assembly on improvements in those areas. This examination includes studying budgets, programs, and policies of the State Board of Elections and county boards of elections, examining election statutes and court decisions, studying election initiatives in other states, and other matters necessary to fulfill the Commission's mandate.

Candidates on Ballot in New Election. - The act amends the statute listing which candidates appear on an official ballot in a new election to provide that, in an election for a multiseat office, if the irregularities could not have affected the election of one or more of the candidates, upon the agreement of at least four members of the State Board of Elections (State Board) the new elections may be held among only those candidates whose election could have been affected by the irregularities. The statute previously had applied the exception when irregularities could not have affected the election of one or more of the leading vote getters.

Reauthorization of Instant Runoff Voting Pilot. - The act authorizes the State Board to select elections for offices of local government in up to 10 local jurisdictions in 2009, 2010, and 2011 in which to use instant runoff voting (IRV). IRV is a method to allow voters to pick a winner by majority (or 40% plurality in partisan primaries) without having to go through a separate runoff.

- The selection of jurisdictions and administration of IRV must follow the provisions of S.L. 2006-192 (authorizing IRV pilots in local elections in 2007 and 2008) except that the local governing board that is the subject of the election must agree to participation in the pilot and to development of and participation in a plan to educate candidates and voters on instant runoff voting.

- In local board of education elections where the local governing board must be asked to authorize IRV because nonpartisan plurality elections are normally used, the board of education is the local governing board.
- In multiseat contests, the State Board must modify the methods used for IRV in single-seat contests to apply the essential principles suitably to that election.
- If IRV is used in place of the nonpartisan election and runoff method, the county board of elections, with the approval of the local governing board, may hold the election on the first Tuesday after the first Monday in November.
- The State Board, in consultation with The University of North Carolina School of Government, must develop goals, standards consistent with general election law, and criteria for implementation and evaluation by January 1, 2009, and the pilot program must be conducted according to these goals, standards, and criteria.

Service and Appeal of Order on Election Protest. – The act eliminates the requirement that a copy of a final decision by the State Board on an election protest must be served personally or by certified mail, and instead requires that the final decision must be served personally, or through delivery by the United States mail, or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2), if that delivery provides a record of the date and time of delivery to the address provided by the party. 26 U.S.C. § 7502(f)(2) authorizes the Secretary of the United States Treasury to designate delivery services by a trade or business for mailings to the Internal Revenue Service. If service is made by mail or designated delivery service, the additional time after service provided by Rule 6(e) of the North Carolina Rules of Civil Procedure (three days) will apply to both the time of appeal and the time to obtain a stay. This provision becomes effective October 1, 2008.

Definition of Election for Determining 30-Day Residence. - The act clarifies that an election, for purposes of the 30-day residence requirement to vote in an election, means the day of the primary, second primary, general election, special election, or referendum to be voted in, and makes conforming changes to other statutes.

Compliance with *North Carolina Right to Life v. Leake*, 525 F.3d 274 (4th Cir. 1999). The act amends three aspects of the campaign finance law after North Carolina Right to Life prevailed in the 4th U.S. Circuit Court:

- **The Major Purpose Test.** The 4th Circuit held that North Carolina's definition of "political committee" is invalid, because it makes a group a political committee if it "has a major purpose to support or oppose the nomination or election of one or more clearly identified candidates." The court said precedents allowed regulating a group as a political committee only if it has as the major purpose supporting or opposing those candidates' election. This section changes "a" to "the."
- **The Context Standard for Express Advocacy.** North Carolina's campaign law provided that express advocacy could be proven if the communication consisted of certain "magic words," such as those listed in the statute, or according to a test that contained contextual factors. The 4th Circuit in *Leake* held that the contextual test was unconstitutionally vague. The act repeals the contextual test.
- **"Independent Expenditure Committees."** The act exempts from the \$4,000 limit contributions to any political committee that certifies that it will not make contributions to candidates or to political committees that do.

Change Candidate Protection in Judicial Public Financing. The act repeals the 21-day embargo and replaces it with a provision to expedite matching funds to appellate judicial race candidates who opt into the Public Campaign Fund. The program provides matching funds if the opponent outspends what the candidate opting in can spend, and it places an embargo on non-participating candidates receiving contributions during the final 21 days before the election if the contributions would put those candidates over the trigger for matching funds.

Exempt Certain Party Campaign Sales. The act provides a mechanism for the reporting of certain, limited consumer-type goods sold by an executive committee. Currently, in all purchases of consumer-type goods from a campaign, the purchase price is treated as a

contribution. The treasurer must keep accounts of each purchase, with the contributor's name and employer/occupation information, and must include the identifying information about the contributor on the campaign report if the contribution exceeds \$50. The act does not exempt such purchases from the definition of "contribution," but it provides a limited way for political party executive committees to sell consumer items without getting the usual paperwork from the purchasers. For counties not covered by Section 5 of Voting Rights Act, these provisions became effective when the act became law. For covered counties, these provisions became effective August 15, 2008, or upon Voting Rights Act approval, whichever occurs later. If Voting Rights Act approval is denied, these provisions are repealed.

Require Campaign Reporting by Relevant Schedule. If political committees are established under the main campaign finance part of the statutes, they are required to report quarterly during the even-numbered election year and semi-annually during odd-numbered years. The municipal part of the campaign finance laws has a different, shorter schedule. (Most municipal elections occur in odd-numbered years.) The act requires any treasurer established under one of those parts to report under the schedule of the other part, if the treasurer's committee participates by contributing or spending in an election under the other part. These provisions become effective December 1, 2008.

Prohibit Commingling of Campaign Funds. The act requires a treasurer of a candidate or political committee to maintain all the campaign's funds in one or more bank accounts in which no other funds would be commingled. This provision became effective September 1, 2008.

New Party Candidate Affiliation with New Party. The act amends the law (general election participation by new political party) to require that any candidate nominated by a new party must be affiliated with that party at the time of certification to the State Board of Elections. The affiliation requirement is met if the candidate submits an application to change party affiliation to the new party at or before the time of certification as a candidate. This change becomes effective January 1, 2009, and applies to elections held on or after that date.

Reduce Reporting Required of Opponents of Publicly Funded Candidates. Currently, candidates and others not participating in the public campaign financing programs for judicial and Council of State offices are required to make reports of their contributions and spending to make it possible to know whether the trigger has been reached for matching funds for the participating candidate. The act reduces the reporting that is required.

Limit Prohibition on Electioneering Communication. The act amends the statutes that prohibit corporations and unions from making electioneering communications by adding language from the U.S. Supreme Court's 2007 decision in *Wisconsin Right to Life v. FEC*. The prohibition does not apply "unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

Require 48-Hour Reports of Large, Late Contributions from Any Source. Currently, if campaign treasurers receive campaign contributions after the final pre-election report is due but before the election, the treasurer must report any such contribution of \$1,000 or more within 48-hours, if the contribution is from a political committee. The act amends that requirement to apply it to these late \$1,000-or-more contributions if they come from any source, not just from a political committee. This requirement becomes effective October 1, 2008.

Except as otherwise provided, this act became effective August 2, 2008. (EC and KM)

Chapter 7

Courts, Justice, and Corrections

Brenda Carter (BC), Tim Hovis (TH), Brad Krehely (BK),
Howard Alan Pell (HAP), Susan Sitze (SS)

Enacted Legislation

Medical Release for Ill and Disabled Inmates

S.L. 2008-2 (SB 1480) creates a new article to provide for medical release of inmates. The act provides that the Post-Release Supervision and Parole Commission (Commission) must set reasonable conditions on medical release that will apply for any length of time determined by the Commission through the date the inmate's sentence would have expired. The program is administered by the Department of Correction (DOC).

- Eligibility. – Inmates who meet both of the following requirements are eligible for consideration of medical release:
 - Diagnosed as permanently and totally disabled, terminally ill, or geriatric.
 - Incapacitated to the extent they do not pose a public safety threat.
- Exceptions. – The following inmates are not eligible for medical release: those convicted of a capital felony, a Class A, B1 or B2 felony, or an offense requiring registration as a sex offender.
- Conditions. – Conditions of release include all of the following:
 - Care is to be consistent with the care specified in a medical care plan.
 - The inmate must cooperate with and comply with the prescribed medical release plan and with reasonable requirements of medical providers to whom the released inmate is to be referred for continued treatment.
 - The inmate must be subject to supervision by the Division of Community Corrections and must permit officers from the Division to visit the inmate at reasonable times at the inmate's home or elsewhere.
 - The inmate must comply with any conditions of release set by the Commission.
 - The DOC must receive periodic assessments from the treating physician.
- Revocations. – If the Commission receives credible information that an inmate has failed to comply with any reasonable condition set for release, the inmate must be promptly ordered returned to the custody of the Department to await a revocation hearing. If the Commission subsequently revokes an inmate's medical release for failure to comply, the inmate must resume serving the balance of the sentence with credit given only for the duration of the inmate's medical release served in compliance with the conditions.
- Status Change. – If an inmate on medical release shows improvement and would no longer meet program eligibility requirements, the inmate can be returned to the DOC's custody and will be given credit for the time on medical release.

This act became effective June 10, 2008. (HAP)

Domestic Violence Victim Assistance

S.L. 2008-4 (HB 2189). See **Children and Families**.

Use of Social Security Numbers on Child Support Court Orders

S.L. 2008-12 (HB 724) amends the law concerning child support actions by eliminating the requirement that child support orders entered or modified in the courts of this State contain the social security numbers of the parties.

This act becomes effective October 1, 2008. (BC)

Domestic Violence Orders/Repeat Violators

S.L. 2008-93 (HB 44). See **Children and Families**.

Criminal Justice Data Integration Pilot Program

S.L. 2008-107, Sec. 6.15 (HB 2436, Sec. 6.15) directs the State Controller to develop and implement a Criminal Justice Data Integration Pilot Program in Wake County that will provide up-to-date criminal information in a centralized location by way of a secure connection for shared use by State and local government criminal justice agencies. The pilot program is to be developed by May 1, 2009, in cooperation with the State Chief Information Officer and under the governance of the BEACON Project Steering Committee. This section establishes an advisory committee consisting of the president of Duke University and the chancellor of The University of North Carolina-Chapel Hill, along with various judicial officials in Wake County including the district attorney, the senior resident superior court judge, a magistrate, the Clerk of Superior Court, the Sheriff, the judicial district manager, and the chief court counselor. The Advisory Committee will work with State court and criminal justice agencies to identify informational needs, develop a plan of action, provide access to data, and implement applications for the sharing of criminal justice and corrections data. Up to \$5 million in appropriated funds may be used to support the pilot program. The Office of the State Controller is directed to provide written reports to the legislature concerning the program's implementation progress on a quarterly basis beginning October 1, 2008.

This section became effective July 1, 2008. (BC)

Additional Assistant District Attorneys

S.L. 2008-107, Sec. 14.6 (HB 2436, Sec. 14.6) provides for the appointment of 31 additional full-time assistant district attorneys as follows:

Beaufort/Hyde/Martin/Tyrrell/Washington -1	Montgomery/Randolph - 1
New Hanover/Pender -1	Rowan - 1
Edgecombe/Nash/Wilson -1	Anson/Richmond/Stanly - 1
Person/Caswell - 1	Union - 1
Wake - 3	Forsyth - 1
Harnett/Johnston/Lee - 2	Burke/Caldwell/Catawba - 1
Cumberland - 1	Mecklenburg - 5
Durham - 2	Gaston - 1
Alamance - 1	Cleveland/Lincoln - 1
Scotland/Hoke - 1	Buncombe - 1
Rockingham - 1	Guilford - 1
Stokes/Surry - 1	

This section became effective July 1, 2008. (BC)

Feasibility Study on Providing the Office of Indigent Services with Indigent Case Information when Cases are Initiated

S.L. 2008-107, Sec. 14.7 (HB 2436, Sec. 14.7) directs the Office of Indigent Services and the Administrative Office of the Courts to consult on developing a Statewide system to enable the Office of Indigent Services to obtain information about a case when counsel is first appointed and to develop a proposal for implementation of the system. The report must be included in the annual report of the Office of Indigent Services which is due on March 1, 2009.

This section became effective July 1, 2008. (TH)

Juvenile Crime Prevention Council Effectiveness Study

S.L. 2008-107, Sec. 14.8 (HB 2436, Sec. 14.8) directs the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, to conduct a feasibility study for measuring the effectiveness of programs receiving Juvenile Crime Prevention Council grant funds. The provisions of the study are summarized in the **Studies** section of this chapter.

This section repeals a statute which requires an annual report by the Department of Juvenile Justice (Department) to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Department and a summary of local programs receiving State funds.

This section became effective July 1, 2008. (TH)

Legal Assistance to Homeowners

S.L. 2008-107, Sec. 14.9 (HB 2436, Sec. 14.9) amends the General Statutes to authorize legal assistance through legal services programs to consumers in cases involving predatory mortgage lending, mortgage broker and loan services abuses, foreclosure defense, and other legal issues relating to helping consumers avoid foreclosure and home loss.

This section became effective July 1, 2008. (TH)

Additional District Court Judges

S.L. 2008-107, Sec. 14.13 (HB 2436, Sec. 14.13) provides for the appointment of three additional district court judges. Wake, Harnett, and Mecklenburg counties each will receive one additional judge. The Governor will make the initial appointments, and those judges' successors will be elected in the 2010 election for four-year terms commencing January 1, 2011.

As to Harnett County, this section becomes effective January 1, 2009, or 15 days after preclearance under Section 5 of the Voting Rights Act of 1965, whichever is later. The remainder of this section becomes effective January 1, 2009. (BC)

Juvenile Crime Prevention Councils Formula Revision

S.L. 2008-107, Sec. 16.3 (HB 2436, Sec. 16.3) requires the Department of Juvenile Justice and Delinquency Prevention, the North Carolina Juvenile Services Association, and the Community Alternatives for Youth, in consultation with the Fiscal Research Division, to develop and propose a revision to the county allocation formula for Juvenile Crime Prevention Councils. The Department must report the recommendations to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; the Chairs of the House of Representatives and Senate Appropriations Committees; and the Chairs of the Subcommittees on Justice and

Public Safety of the House of Representatives and Senate Appropriations Committees by December 1, 2008.

This section became effective July 1, 2008. (BK)

Department of Correction/Temporary Housing/Evaluation

S.L. 2008-107, Sec. 17.1 (HB 2436, Sec. 17.1) authorizes the Department of Correction (Department) to use available funds to secure appropriate temporary housing for offenders on post-release supervision, probation, or parole who are at risk for being homeless. The authorization is limited to 30 continuous days. Excluded from temporary housing are hotels, motels, nursing homes, adult care facilities, group homes containing the physically or developmentally disabled, or any residential facility where minors are housed.

The Department is directed to evaluate the most effective means for providing temporary housing for offenders under its supervision who are at risk of being homeless. The evaluation must include other states' practices and the feasibility of establishing a central facility or facilities to house such offenders. The Department must report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by January 1, 2009.

This section became effective July 1, 2008. (HAP)

Report on Probation and Parole Caseloads/Compensation Study

S.L. 2008-107, Sec. 17.4 (HB 2436, Sec. 17.4) amends the annual reporting requirement on probation and parole caseloads by the Department of Correction (DOC) and directs a study on probation and parole officer compensation by the Office of State Personnel (OSP). The provisions of the probation and parole officer compensation study are summarized in the **Studies** section of this chapter.

The act amends the items required in DOC's annual report on probation and parole to the Legislature to include the current caseload averages for Chief Probation Parole Officer positions and an explanation of the process of assigning offenders to an appropriate supervision level, based on a risk assessment and an examination of existing resources. The listed resources include (i) the Sentencing Services Program in the Office of Indigent Defense Services, and (ii) screening and assessment services provided by the Division of Mental Health, Developmental Disability, and Substance Abuse Services in the Department of Health and Human Services.

This section became effective July 1, 2008. (HAP)

Use of Illegal Immigration Project Funds

S.L. 2008-107, Sec. 18.3 (HB 2436, Sec. 18.3) requires the North Carolina Sheriffs' Association to report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the operations and effectiveness of the Illegal Immigration Project. The report is due no later than March 1, 2009, and must include:

- An overview of the program.
- The program budget.
- A summary of work done with funds received.
- Recommendations on ways that federal, State, and local resources can be used to further improve the effectiveness of the project and other immigration enforcement initiatives.

This section became effective July 1, 2008. (SS)

Fee Increase for Domestic Violence Programs

S.L. 2008-107, Sec. 29.1 (HB 2436, Sec. 29.1) changes the current fee assessed against a person filing for divorce from \$55 to \$75. This section directs the State Treasurer to deposit \$55 of the fee to the North Carolina Fund for Displaced Homemakers and the remaining \$20 to the Domestic Violence Center Fund.

This section became effective July 20, 2008. (SS)

Establish Court Facility Fee for Phone System

S.L. 2008-107, Sec. 29.8 (HB 2436, Sec. 29.8), as amended by S.L. 2008-118, Sec. 2.9(a) (HB 2438, Sec. 2.9(a)) adds a \$1.00 fee to court costs for the upgrade, maintenance, and operation of the judicial and county courthouse phone systems. The fee is credited to the Court Information Technology Fund specifically for use to upgrade, maintain, and operate judicial and county courthouse phone systems. This section repealed a provision which required the counties to provide telephones and the necessary equipment and infrastructure.

The portion of this section assessing fees became effective July 20, 2008, and applies to all costs assessed and collected on or after that date. However, for misdemeanor or infraction cases disposed of on or after July 20, 2008, 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 July 20, 2008, the fee must not be collected if the notice portion of the defendant's or respondent's copy of the citation or other criminal process specifies costs and those costs do not include the \$1.00 fee.

The remainder of this section became effective July 1, 2008. (SS)

Probation Violation Changes

S.L. 2008-129 (HB 1003) amends the law concerning felony sentencing, to add as an aggravating factor a defendant's willful violation of conditions of probation imposed pursuant to a suspended sentence, or a defendant's willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration. The act also amends the law concerning alteration and revocation for probation violations, to provide that the court may extend or modify probation after the expiration of the period of probation when the probationer has violated one or more conditions of probation prior to the expiration of probation and other specified conditions are met.

This act becomes effective December 1, 2008. The changes concerning felony sentencing apply to offenses committed on or after that date; the changes concerning probation apply to probation violation hearings on or after that date. (BC)

Frequency of Parole Reviews

S.L. 2008-133 (HB 1624) limits the frequency of parole reviews for inmates convicted of murder offenses occurring before October 1, 1994. The Parole Commission is now required to review such cases once every third year rather than annually. However, the Commission may give more frequent parole consideration if it finds that exigent circumstances or the interests of justice demand it.

This act becomes effective October 1, 2008, and applies to parole reviews conducted on or after that date. (BC)

Amend Release of Juvenile Escape Information

S.L. 2008-169 (HB 2492) amends the statutes regarding the release of juvenile identification information upon escape from custody. The act requires the Department of Juvenile Justice and Delinquency Prevention (Department) to release certain information to the public upon the juvenile's escape from a detention facility, secure custody, or a youth development center, if the juvenile has been adjudicated delinquent for any offense. The juvenile's first name, last initial, and photograph, as well as information about the location from which the juvenile escaped, must be released.

The act authorizes, but does not require, the release of information to the public when a juvenile escapes from a detention facility or secure custody, if the juvenile is alleged to have committed an offense that would be a felony if committed by an adult, and the Department determines, based on the juvenile's record, that the juvenile presents a danger to self or others.

The act requires the Department to make a reasonable effort to notify a parent, legal guardian, or custodian of the juvenile before releasing the information.

This act becomes effective October 1, 2008. (SS)

Compensation for Erroneously Convicted

S.L. 2008-173 (HB 2105) increases the compensation provided to persons who have received a pardon of innocence after having been erroneously convicted of felonies. The compensation is available for each year or portion of a year that a person was imprisoned as a result of the erroneous conviction. The act raises the amount of compensation per year from \$20,000 to \$50,000 per year, and the total amount of compensation from a cap of \$500,000 to \$750,000. The act expressly provides that a claimant is not entitled to compensation for any portion of imprisonment during which the claimant was also serving a concurrent sentence for conviction of a crime other than the one for which the pardon of innocence was granted.

The act also requires the Industrial Commission to determine the extent to which incarceration has deprived a claimant of educational or training opportunities and, based upon those findings, the Commission may award compensation for loss of life opportunities in the following manner:

- Job skills training for at least one year through an appropriate State program.
- Expenses for tuition and fees at any public North Carolina community college or constituent institution of The University of North Carolina system for any degree or program of the claimant's choice that is available from one or more of those institutions.
 - Claimants are also entitled to assistance in meeting admission standards or criteria required at those institutions, including assistance with a GED.
 - A claimant may apply for educational aid within 10 years of his or her release from incarceration and the aid shall continue for up to a total of 5 years, provided the claimant makes satisfactory progress in the program in which he or she is enrolled.

This act became effective August 4, 2008 and applies to any person granted a pardon of innocence by the Governor on or after January 1, 2004. (SS)

Expunction of Records

S.L. 2008-187, Sec. 35 (SB 1632, Sec. 35) clarifies that the earliest a petition for expunction may be filed is the later of (1) two years after the date of conviction, or (2) the completion of any period of probation.

This section became effective August 7, 2008. (TH)

Amend Interstate Compact/Adult Offenders

S.L. 2008-189 (SB 1214) makes changes to the Interstate Compact for the Supervision of Adult Offenders. The act renames the compact the Interstate Compact for Adult Offender Supervision.

The act makes the following changes to the Compact:

- Adds three new members to the State Council for Interstate Adult Offender Supervision:
 - A district court judge, to be appointed by the Chief Justice of the Supreme Court.
 - A district attorney, to be appointed by the Governor.
 - A sheriff, to be appointed by the Governor.
- Provides that the Governor, in consultation with the legislature and judiciary, must appoint the Compact Administrator, and that person must be appointed by the State Council as North Carolina's Commissioner to the Interstate Compact Commission. The Commissioner must be a member of the State Council and must serve as chair of the State Council. Previously, the Secretary of Correction, or the Secretary's designee, served as the Commissioner and as chair of the State Council.
- Adds a new fee of \$150 for each transfer application submitted by a person convicted in this State wishing to transfer supervision to another state. The Compact Commissioner may waive the fee if the payment would constitute an undue economic burden on the offender. Fees will be deposited into the Interstate Compact Fund and used only in support of administration of the Interstate Compact.
- Establishes the Interstate Compact Fund within the Department of Correction as a nonreverting, interest-bearing special revenue account used to supplement funds otherwise available to the Department of Correction for the administration of the Compact.
- Allows the Compact Commissioner to waive the existing monthly supervision fee of \$30 if the payment of the fee would constitute an undue economic burden on the offender.
- Reorganizes the procedures for interstate parole and probation hearings as follows:
 - Eliminates a provision that required notice to other states and provided that the offender could be held for a reasonable period after the hearing or waiver of hearing as necessary if it appeared to hearing officers that retaking or reincarceration was likely.
 - Adds a mandate that offenders are not entitled to bail pending hearings.
 - Provides for recording of the hearing, notification to the sending state, and requires that if the hearing recommendation is to retake or reincarcerate the offender, the hearing officer can detain the offender until notice is received from the sending state and that, if the sending state provides notice that it intends to retake or reincarcerate the offender, the offender must remain in custody after the hearing as necessary to arrange for the retaking.

This act became effective August 7, 2008. (SS)

Court Fee Exemption

S.L. 2008-193 (SB 2056) repeals the prior law and clarifies that counties and municipalities must advance costs, except for the following:

- The facilities fee.
- The General Court of Justice fee.
- The miscellaneous fees enumerated in the General Statutes for child support actions, child abuse actions, and other actions filed by the Department of Social Services.
- The civil process fees enumerated in the General Statutes.

The provisions repealing the prior law became effective June 30, 2008. The provision clarifying which costs must be advanced became effective July 1, 2008. (BK)

Update Entities Receiving Funds from State Bar

S.L. 2008-194, Sec. 3 (HB 545, Sec. 3) amends the list of entities included as "established legal services programs" to which the North Carolina State Bar may allocate funds under the Access to Civil Justice Act and the Domestic Violence Assistance Act, to remove the Legal Aid Society of Northwest North Carolina.

This section became effective August 8, 2008. (TH)

Mediated Settlement Conference Changes

S.L. 2008-194, Sec. 8 (HB 545, Sec. 8) clarifies a clerk's or judge's authority to hold in contempt or impose monetary sanctions against a party who fails to pay the mediator's fee in the course of a mediated settlement conference in matters before a clerk, or in district court or superior court, as applicable.

This section becomes effective January 1, 2009. (TH)

Modify Dormitory Requirements in Certain County Detention Facilities

S.L. 2008-194, Sec. 10 (HB 545, Sec. 10) authorizes dormitory capacity of 56 inmates for county detention facilities in counties that have a population in excess of 600,000 so long as the following requirements are met:

- Minimum floor space of 70 square feet per inmate.
- One shower, one toilet, one sink with security mirror per eight inmates, and one water fountain.
- A telephone jack or other telephone arrangement within the dormitory.
- Space designed to allow a variety of activities.
- Sufficient seating and tables for all inmates.
- A way for officers to observe the entire area from the entrance.

This section became effective August 8, 2008. (TH)

Limited Release from Prison for Deportation

S.L. 2008-199 (SB 1955) provides for conditional release of inmates into the custody and control of the United States Immigration and Customs Enforcement (ICE). The inmates must meet the following requirements:

- Are convicted of certain nonviolent criminal offenses.
- Are subject to a final order of removal by the United States Immigration and Customs Enforcement.
- Have served at least half their sentences.
- Agree not to unlawfully return to the United States.
- Meet certain additional requirements for the purposes of deportation.

A "nonviolent offense" is defined as one of the following:

- An impaired driving offense (excluding impaired driving offense resulting in death or serious bodily injury).
- A felony violation of:
 - G.S. 14-54 (Breaking or entering buildings generally).

- G.S. 14-56 (Breaking or entering into or out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft).
- G.S. 14-71.1 (Possessing stolen goods).
- G.S. 14-100 (Obtaining property by false pretenses) when the thing of value is less than \$100,000.
- G.S. 90-95(d)(4) Possession of a Schedule VI controlled substance (greater than 1.5 ounces of marijuana, 3/20s of an ounce of hashish, or any quantity of tetrahydrocannabinols).

Release is discretionary. If the requirements are satisfied, the decision to release an inmate is in the sole, unappealable discretion of the Commission. In the event that ICE is unable to or does not deport the inmate, the inmate must be returned to the custody of the Department of Correction.

This act became effect August 8, 2008. (HAP)

National Instant Criminal Background Check System Reporting/Restoration

S.L. 2008-210 (SB 2081) requires the clerk of superior court to report to the National Instant Criminal Background Check System (NICS) any individual who:

- Is involuntarily committed either for inpatient or outpatient mental health treatment. If the person has been involuntarily committed to outpatient mental health treatment, the person must be reported only if the individual is found to be a danger to himself, herself, or others.
- Is acquitted of a crime by reason of insanity.
- Is found mentally incompetent to proceed to criminal trial.

The act also provides a restoration procedure to remove the mental commitment bar to purchasing, possessing, or transferring firearms. This restoration procedure is not available to a person who has been found not guilty by reason of insanity. The petition must be filed in the district court in the county in which the commitment took place or the county in which the person resides. The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner no longer suffers from the condition that resulted in commitment and no longer poses a danger to himself, herself, or others for purposes of the purchase, possession, or transfer of firearms. The district attorney may present evidence to the contrary. The hearing is closed to the public, unless the court finds that the public interest is better served by conducting the hearing in public. The decision of the district court may be appealed to superior court for a hearing de novo. If the superior court issues a denial, the applicant must wait a minimum of one year before reapplying. If a petition is granted, the clerk of superior court must forward the order to NICS. If a person succeeds in a restoration proceeding, the disqualifications from receiving a purchase permit and a concealed carry permit because of involuntary commitment are removed.

This act becomes effective December 1, 2008. (BK)

Street Gang/Suppression

S.L. 2008-214 (HB 274). See **Criminal Law and Procedure**.

Studies

Legislative Research Commission

Youthful Offender Expunction

S.L. 2008-181, Sec. 2.5 (HB 2431, Sec. 2.5) authorizes the Legislative Research Commission to study issues related to the expunction of youthful offenders' criminal records and allows the Criminal Justice Education and Training Standards Commission and the Sheriff's Education and Training Standards Commission access to expunged records.

This section became effective August 4, 2008. (TH)

Expiration of Concealed Handgun Permits

S.L. 2008-181, Sec. 2.8 (HB 2431, Sec. 2.8) provides that the Commission may study timing issues involved in renewing a concealed handgun permit, including whether there should be a time limit for sheriffs to review renewal applications to avoid the expiration of permits before completion of the review process.

This section became effective August 4, 2008. (TH)

Referrals to Existing Commissions/Committees

Governor's Crime Commission Study/Expand Juvenile Jurisdiction

S.L. 2008-107, Sec. 18.1 (HB 2436, Sec. 18.1) directs the Governor's Crime Commission (GCC) to study the legal, systematic, and organizational impact of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention (DJJDP) to include persons 16 and 17 years of age, who commit crimes or infractions under State or local laws or ordinances. The GCC is charged to:

- Identify the costs to the State court system and State and local law enforcement.
- Review relevant State laws that should be conformed or amended, including motor vehicle and criminal laws and expunction of records.
- Review other jurisdictions which have expanded juvenile jurisdiction.
- Identify the practical issues for the DJJDP to implement best practices to meet the unique needs of older youth without affecting existing departmental programming.
- Review State laws on juvenile information sharing with other State agencies.
- Create a specific plan of actions necessary for expansion of jurisdiction.
- Determine the total costs for expansion of jurisdiction.
- Conduct a cost-benefit analysis of expanding the jurisdiction with specific information on cost savings.
- Determine the availability of federal or other funds to aid in the transition.

Other State agencies and departments are directed to cooperate with the GCC in the study and to provide any requested facilities, data, or other assistance. The GCC is required to submit quarterly progress reports, commencing October 1, 2008, and a final report to committees of the General Assembly and to the Governor by April 1, 2009. The report must contain its findings and legislative, administrative, and funding recommendations.

Of the funds appropriated to the Department of Crime Control and Public Safety, the GCC is authorized to expend up to \$200,000. The GCC also may apply for, receive, or accept grants and contributions for the purposes of the study.

This section became effective July 1, 2008. (HAP)

Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee Studies

S.L. 2008-181, Part VIII (HB 2431, Part VIII) authorizes the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee (Committee) to study the following:

- Whether, and under what circumstances, the prescription drug database maintained by the Department of Health and Human Services should be accessible to county sheriffs and deputy sheriffs.
- Methods for increasing inmates' access to educational and vocational training opportunities at all State prison facilities.
- Methods for increasing the number of work release slots at minimum security prisons.

The Committee may report its findings, together with any recommended legislation, to the 2009 Regular Session of the General Assembly.

This part became effective August 4, 2008. (TH)

Referrals to Departments, Agencies, Etc.

Juvenile Crime Prevention Council Effectiveness Study

S.L. 2008-107, Secs. 14.8(a)-(b) (HB 2436, Secs. 14.8(a)-(b)) direct the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, to conduct a feasibility study for measuring the effectiveness of programs receiving Juvenile Crime Prevention Council (JCPC) grant funds. State agencies and community-based programs receiving JCPC funding must provide data as requested by the Commission.

These sections direct the Commission to provide an interim report by December 1, 2008, on its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; the Chairs of the House of Representatives and Senate Appropriations Committees; and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety; and a final plan for measuring the effectiveness of JCPC programs by May 1, 2009, to the Chairs of Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

These sections repeal a statute which requires an annual report by the Department of Juvenile Justice to the General Assembly on the effectiveness and cost benefit of Department programs.

These sections became effective July 1, 2008. (TH)

Report on Probation and Parole Caseloads/Compensation Study

S.L. 2008-107, Sec. 17.4 (HB 2436, Sec. 17.4), in addition to amending items required in the annual report on probation and parole by the Department of Correction (DOC) (see summary under **Enacted Legislation** above), directs the Office of State Personnel (OSP), in conjunction with the DOC, to conduct a compensation study of probation parole officers. The study is to include the identification and assessment of relevant labor market comparisons for which:

- The job duties are similar.
- The education and experience requirements are similar.
- The labor markets are representative of markets that typically seek to draw qualified applicants from similar backgrounds.

The OSP must report the results of the study and any adjustment recommendations to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 2009.

This section became effective July 1, 2008. (HAP)

Chapter 8
Criminal Law and Procedure

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Enacted Legislation

Vandalism Damages More than \$5,000/Felony

S.L. 2008-15 (HB 946) provides that an offense of vandalism that results in damages of more than \$5,000 is a Class I felony. An offense resulting in damages less than \$5,000 remains a Class 2 misdemeanor.

This act becomes effective December 1, 2008, and applies to offenses occurring on or after that date. (SS)

Street Gang/Prevention and Intervention

S.L. 2008-56 (SB 1358), as amended by S.L. 2008-187, Sec. 44.5 (SB 1632, Sec. 44.5), modifies the law relating to Juvenile Crime Prevention Councils to require each County Council to assess the needs of juveniles in the county who are at risk or who have been associated with gangs, to assess the local resources that are established to address those needs, and to develop strategies to intervene and appropriately respond to those needs.

The Department of Public Instruction and the Department of Juvenile Justice and Delinquency Prevention are directed to evaluate the current status of gang activity and the effectiveness of various responses to it and to report their findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Joint Legislative Education Oversight Committee by December 1, 2008.

The Department of Crime Control and Public Safety is directed to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, on the protocols and procedures used to enter information on juveniles into the GangNet database system.

Effective July 1, 2008, the Governor's Crime Commission is directed to develop eligibility standards for awarding grants for gang prevention and intervention programs. The standards must include a 25% matching requirement, half of which may be in-kind contributions. The Commission is directed to report information concerning the grant program to the Chairs of the Appropriations Committees and the Chairs of the Appropriation Subcommittees on Justice and Public Safety by April 15, 2009. The Commission also is directed to review the level of gang activity throughout the State, to assess the prevention efforts of the State and local governments, and to develop and submit recommendations concerning gang prevention to the General Assembly by March 1 of each year.

This act became effective July 8, 2008. (BC)

Domestic Violence Orders/Repeat Violators

S.L. 2008-93 (HB 44). See **Children and Families**.

Enhance Rape Victims Assistance Program

S.L. 2008-107, Sec. 18.2 (HB 2436, Sec. 18.2) makes changes to the compensation provided under the Rape Victims Assistance Program (Program).

The section shortens the period of time a victim has to report a sexual assault or attempted sexual assault to a law enforcement officer from 5 days to 72 hours of the assault or attempted assault in order to qualify for assistance.

The amount of assistance available is amended to specifically provide that the Program will pay up to a total of \$800:

- \$350 for Physician or SANE Nurse.
- \$250 for Hospital/Facility Fee.
- \$200 for Ambulance Fee.

Payment is made directly to a hospital, ambulance service, or mental health professional providing counseling. An attending physician or licensed registered nurse must seek payment from the hospital that accepted payment on the person's behalf. The section provides that no payment will be made unless the recipient agrees in writing that receipt of that payment will constitute payment in full for the amount owed for the cost of the examination and expenses related to the examination.

The section still allows denial or reduction of assistance to the extent the expenses are covered by public or private insurance. However, it provides that the Program will pay any co-payment a victim is required to pay in connection with the forensic medical examination up to the maximum amount that the Program would pay in cases where there is no insurance.

The section authorizes \$1,078,078 of the appropriation to the Department of Crime Control and Public Safety to be used to enhance the ability of the Assistance Program for Victims of Rape and Sex Offenses to provide assistance to victims of rape and sexual offenses.

This section became effective July 1, 2008. (SS)

Jessica Lunsford Act for North Carolina

S.L. 2008-117 (HB 933) includes new criminal laws for offenses against children, increases penalties for other offenses, makes it unlawful for registered sex offenders to be on or near certain premises, and makes changes to laws relating to the sex offender registry. The major provisions of the act include:

- **Rape or Sex Offense.** - It is a Class B1 felony for a person to rape or commit a sexual offense against a child less than 13 years of age. Although the State's Structured Sentencing Act applies, there are two exceptions. The minimum active prison sentence is 25 years, and the court may sentence the defendant beyond the guidelines (up to life in prison without parole) due to the nature of the offense and the gravity of the harm inflicted on the victim. Any term of imprisonment will be followed by lifetime satellite-based monitoring.
- **Sexual Exploitation.** - The penalties for sexual exploitation of a minor are increased as follows:
 - First degree sexual exploitation: Increased from a Class D to a Class C felony.
 - Second degree sexual exploitation: Increased from a Class F to a Class E felony.
 - Third degree sexual exploitation: Increased from a Class I to a Class H felony.
- **Prostitution.** - The penalty for promoting the prostitution of a minor is increased from a Class D to a Class C felony.
- **Prohibited Areas.** - It is a Class H felony for a registered sex offender to be on premises primarily intended for the use, care, or supervision of minors. Registrants also are prohibited from being within 300 feet of these places when they are not on "premises" that are intended primarily for minors. For example, a registered sex offender must be 300 feet from a day care center located in a shopping center.

[Note: These restrictions apply only if the offense which required registration involved a minor, or was of a sexually violent nature, *e.g.*, rape]

- Emergency Care - The law does not apply if the parent or guardian of a minor is a registered offender and is taking the minor for emergency medical care, or the registrant is entering, exiting, or voting at a polling place (if the polling place is a school, notice must be given to the principal).
 - Medical Treatment - A juvenile who is a registered sex offender may be at an otherwise prohibited location to receive medical treatment or mental health care, if under supervision.
 - Educational Property - A registrant may be on school grounds in limited circumstances (*e.g.*, teacher conference) so long as the school principal has notice and the registrant is under supervision.
- **Registration Period.** - The registration period for sex offenders, who are not on the sex offender registry for life, is increased to 30 years. After 10 years on the registry, offenders may seek a hearing in superior court to be removed from the registry. The 30-year registration period becomes effective for registrations on or after December 1, 2008.
- **Registration Time.** - The required time for a registered sex offender to make registry changes is shortened from 10 days to 3 business days (*e.g.*, a change of address, work or school-related changes).
- **Students.** - Local boards of education are authorized to expel students who are required to register as sex offenders. A local board of education's decision to expel a student must be based on clear and convincing evidence. Prior to ordering the expulsion of a student, the local board of education must consider whether there is an alternative program that can be offered by the local school administrative unit to provide educational services to the student. If the local board of education determines that the student will be provided educational services on school property, the student must be under the supervision of school personnel at all times. (DC) See **Education**.
- **Probation.** - If a sex offender who is on probation is arrested for an offense, a judge must make a finding that the offender is not a danger to the public prior to releasing the offender, either with or without bail.
- **Post Release Supervision.** - A person on the registry who violates the terms of post-release supervision must be held without bond until a preliminary hearing is conducted.
- **Contractual Personnel.** - Local boards of education must require that employers of contractual personnel conduct annual checks of the contractual personnel on the following: State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. "Contractual personnel" is defined as any individual (i) who is under contract with the local board of education; (ii) whose contractual job involves direct student interaction as a part of the job; and (iii) who is not covered under the school personnel criminal history check statute. As a term of any contract, a local board of education must prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students. (DC) See **Education**.
- **Federal Law Compliance.** - The North Carolina Department of Justice is directed to study the guidelines issued by the United States Attorney for compliance with the federal Sex Offender Registration and Notification Act. The Attorney General is to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, regarding the State's status for compliance with the Act, and is to recommend any actions or State legislation that

may be required for compliance with the federal law. This provision became effective July 28, 2008.

This act, unless otherwise noted above, becomes effective December 1, 2008, and applies to offenses occurring on or after that date. (HAP)

Prohibit Certain Game Promotion

S.L. 2008-122 (SB 180) prohibits certain server-based game promotions. The act creates two new crimes:

- Promoting, operating, or conducting a server-based electronic game promotion.
- Possessing any game terminal with a display that simulates a game ordinarily played on a slot or video gaming machine for the purpose of promoting, operating, or conducting a server-based electronic game promotion.

The punishment for the crimes is as follows:

- **First offense** - Class 1 misdemeanor.
- **Second offense** - Class H felony.
- **Third and subsequent offenses** - Class G felony.
- Any person **possessing five or more game terminals** for the purpose of promoting, operating, or conducting a server-based electronic game promotion is guilty of a Class G felony.
- Any conviction of either crime automatically revokes any ABC permit and any North Carolina Lottery retailer license.

A **server based-electronic game promotion** is defined as a system that has all of the following components:

- A database containing a pool of game promotion entries with each entry associated with a prize value.
- The participant purchases, or otherwise obtains, a prepaid card, and receives one or more game promotion entries with that purchase.
- The game promotion entries can be revealed in any of the following ways:
 - At a point of sale terminal.
 - At a game terminal with a display that simulates a game ordinarily played on a slot machine or a video gaming machine.

The act also allows for seizure, by sheriffs and other law enforcement officers, of any game terminals unlawfully possessed for the purpose of promoting, operating or conducting a server-based electronic game promotion.

This act becomes effective December 1, 2008, and applies to offenses occurring on or after that date. (SS)

Change Penalty for Hit and Run Violations

S.L. 2008-128 (SB 944) makes changes to the hit and run statutes and provides that theft of fixtures attached to real property is larceny.

The term "accident or collision" is deleted throughout and replaced with the term "crash." A "crash" is defined as "[a]ny event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous."

The act also amends the law to create separate offenses for serious bodily injury or death, and for injury. If a driver leaves the scene or removes a vehicle from the scene prior to completion of the investigation by law enforcement and the crash results in *serious bodily injury* or death, the driver is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or

impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." If a driver leaves the scene or removes a vehicle from the scene prior to completion of the investigation by law enforcement and the crash results in injury, the driver is guilty of a Class H felony.

The act creates a new statute which provides that all common law distinctions providing that personal property that has become affixed to real property is not subject to a charge of larceny are abolished. The act provides that the removal, taking, or carrying away of any property affixed to real property, with the intent to steal the property, is punishable under the larceny statutes.

This act becomes effective December 1, 2008, and applies to offenses occurring on or after that date. (SS)

Resale of Tickets via Internet

S.L. 2008-158 ([SB 1407](#)). See **Commercial Law and Consumer Protection**.

Amend Criminal Offense of Stalking

S.L. 2008-167 ([HB 887](#)) repeals the current stalking law and rewrites the law to include either of the following actions:

- Willfully on more than one occasion harassing another person.
- Willfully engaging in a course of conduct directed at a specific person.

"Course of conduct" is defined as two or more acts in which the offender is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about the person, or interferes with a person's property. The harassment or course of conduct must be such that a "reasonable person" would either (1) fear for his or her safety, a family member's safety, or the safety of a close personal associate, or (2) suffer substantial emotional distress by placing the person in fear of death, bodily injury, or continued harassment.

Stalking is a Class A1 misdemeanor. A person sentenced to community service also must be sentenced to supervised probation in addition to any other punishment imposed by the court. A person with a previous conviction for stalking, who is convicted a second time, is guilty of a Class F felony. If a person commits the offense while there is a court order in effect prohibiting the conduct against the victim (e.g., civil no-contact order), then the person is guilty of a Class H felony.

This act becomes effective December 1, 2008. (HAP)

Amend Child Abuse/Child Fatality Task Force

S.L. 2008-191 ([SB 1860](#)) increases the penalty for misdemeanor child abuse and amends the offense of felony child abuse. The act increases the penalty for misdemeanor child abuse from a Class 1 misdemeanor to a Class A1 misdemeanor. It creates two new felony child abuse offenses as follows:

- A Class E felony for any parent or other person providing care or supervision to a child whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life if the act or omission results in *serious bodily injury* to the child.
- A Class H felony for any parent or other person providing care or supervision to a child whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life if the act or omission results in *serious physical injury* to the child.

"Serious bodily injury" is defined as bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes

extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. "Serious physical injury" is defined as physical injury that causes great pain and suffering, including serious mental injury.

This act becomes effective December 1, 2008, and applies to offenses occurring on or after that date. (SS)

Up Penalties Cross Burn/Illegal to Hang Noose

S.L. 2008-197 (SB 685) increases the penalties for certain crimes relating to intimidation and makes clarifying changes to those crimes.

The act adds "public place" to the statute, which prohibits a flaming or burning cross, so that it is unlawful to place a burning or flaming cross on the property of another or on any public street or highway, or on any public place with the intention of intimidating any person. Other statutes are amended to clarify that the term "exhibit" includes items such as a noose.

The act also increases the penalties for placing a burning or flaming cross on property of another or on public street or highway or on any public place with the intention of intimidating any person, placing exhibit with intention of intimidating, etc., another, placing exhibit while wearing mask, hood, or other disguise from a Class I felony to a Class H felony. Additionally, the act provides that any Class A1 or Class 1 misdemeanor that is committed because of the victim's race, color, religion, nationality, or country of origin must be punished as a Class H felony. The previous law provided for a Class I felony.

The act directs the Legislative Research Commission to study the impact of recent cross burnings and noose hangings within the State and determine if any modifications should be made to existing statutes to lawfully deter this type of conduct. The Commission must report its findings and make recommendations for legislation to the 2009 Session of the General Assembly.

The provisions of this act relating to statutory offenses and penalties become effective December 1, 2008, and apply to offenses occurring on or after that date. The study provision became effective August 8, 2008. (SS)

Street Gang/Suppression

S.L. 2008-214 (HB 274) enacts the Street Gang Suppression Act, which creates additional offenses, penalties, and criminal procedure for persons involved in criminal street gang activity. As defined in the act, "criminal street gang activity" includes the commission or attempt to commit an act in furtherance of the person's involvement in a criminal street gang in violation of the State's Controlled Substances Act or the State's criminal law. The act defines a criminal street gang as any ongoing organization, association, or group of three or more persons that does all of the following:

- Has as one of its primary activities the commission of one or more felony offenses.
- Has three or more members engaged in criminal street gang activity.
- May have a common name or common identifying signs or symbols.

Criminal Penalties: The Street Gang Suppression Act makes it a Class H felony for anyone associated with a criminal street gang to do any of the following:

- To conduct or participate in the gang through a pattern of criminal street gang activity, which is defined in the act as at least two prior incidents of committing an act in furtherance of the person's involvement in a gang and in violation of the criminal law. At least one of the acts must have occurred after the effective date of the bill (December 1, 2008), and the last of the offenses must have occurred within three years of prior gang activity. To acquire or maintain real or personal property (including money) through a pattern of criminal street gang activity.
- To solicit or coerce another to participate in criminal street gang activity.

- To threaten a person with the intent of deterring that person from assisting a member of a criminal street gang in withdrawing from the gang.
- To threaten a person (or the person's friends or family) with the intent of punishing or retaliating against that person from withdrawing from the gang.

A person is guilty of a Class F felony if he or she acts as an organizer, supervisor, or other position of management with regard to the criminal street gang, or if he or she solicits or coerces a person less than 16 years of age to participate in criminal street gang activity. The act makes it a Class E felony for a person to discharge a firearm toward a person from within any building, car, or other enclosure, when the shooting is committed as part of a pattern of criminal gang activity. The act also amends the law that provides for an enhanced penalty if a defendant is convicted of a Class E or higher felony used a firearm during commission of the felony, by making the enhanced penalty applicable to the use of any deadly weapon.

Pretrial Release: The act creates a rebuttable presumption against the pretrial release of certain repeat offenders who commit an offense in association with a criminal street gang if the offense was committed while the person was on pretrial release for another offense; the person could be released only if the judge finds that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community.

Seizure and Forfeiture of Property: The act amends the law providing for the forfeiture of gain acquired through felonies, to include money or other property acquired through any violation of the Street Gang Suppression Act. The act provides for the seizure and forfeiture of property derived from or used in the course of criminal gang activity, and declares real property used by gangs to be a public nuisance subject to abatement as provided by law. Provisions regarding seizure of property and nuisance abatement will not apply if the owner or person with legal possession of the property did not have actual knowledge that the property was being used for criminal street gang activity.

Applicability to Juveniles: The act generally does not apply to persons under the age of 16; however, any person age 15 or older who is convicted of a misdemeanor offense committed in association with a criminal street gang is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor would be enhanced to a Class I felony.

Deferred Prosecution/Expunction: The act provides for the deferred prosecution of defendants with no prior convictions who were under the age of 18 at the time of the offense. Deferred prosecution means that the defendant may be placed on supervised probation for not less than one year, and upon fulfillment of the terms and condition of probation, the court may discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal may occur only once with respect to any person. Upon discharge and dismissal, the person may apply for an order of expungement. A person who is convicted of an offense under the Street Gang Suppression Act also may apply for order of expungement, provided the person has not been previously convicted of any criminal offense, and the person was under the age of 18 at the time of conviction.

This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. (BC)

Protect Children from Sexual Predators Act

S.L. 2008-218 ([SB 132](#)) expands the definition of "sexual activity" in statutes relating to acts harmful to minors; increases penalties relating to sexual exploitation of minors; increases the penalty in certain circumstances for persons who solicit minors for sexual activity; makes it unlawful for a registered sex offender to access certain commercial social networking sites; and requires these sites to make reasonable efforts to preclude registered sex offenders from accessing the sites. The major provisions are as follows:

- Expands the definition of sexual activity to include lascivious exhibition of a person's pubic area.

- Increases the penalty for first degree sexual exploitation of a minor from a Class D to a Class C felony.
- Increases the penalty for second degree sexual exploitation of a minor from a Class F to a Class E felony.
- Increases the penalty for third degree sexual exploitation of a minor from a Class I to Class H felony.
- Amends the statute that makes it a felony to solicit a minor for sexual activity by use of a computer. The amendment increases the felony offense from a Class H to a Class G if the defendant, or any other person for whom the defendant was arranging the unlawful meeting, actually appears at the meeting location.
- Enacts a statute making it unlawful for a registered sex offender to access a commercial social networking site where minors are allowed to create or maintain personal web pages. Defines the term "commercial social networking web site" as an Internet web site that meets all of the following requirements:
 - Is operated by a person who derives revenue membership fees, advertising, or other sources related to the operation of the web site.
 - Facilitates social introductions between two or more people.
 - Allows users to create web pages or personal profiles that contain additional personal information and photographs.
 - Provides users or visitors to the site with mechanisms to communicate with others, such as a chat room or electronic mail.
- Provides that a site is not considered to be a "commercial social networking web site" if either of the following apply:
 - Provides only one of the following discrete services: photo-sharing, electronic mail, instant messenger, chat room, or message board platform.
 - Has as its primary purpose the facilitation of commercial transactions involving goods or services between its members or visitors.
- Provides that a commercial social networking site may be held civilly liable for damages if it fails to make reasonable efforts to prevent a registered sex offender from accessing its web site. Defines "access" as allowing a registered sex offender to engage in any of the activities defining commercial social networking site in the new statute (see above definition.) This section is effective May 1, 2009, and applies to acts occurring on or after that date.
- Bans registered sex offenders from obtaining a name change and makes it unlawful to do so.

This act, unless otherwise noted above, becomes effective December 1, 2008, and applies to offenses occurring on or after that date. (HAP)

Sex Offender/Register E-Mail Address

S.L. 2008-220 (SB 1736) makes several changes to the sex offender registry statutes.

The act adds violation of G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile) and G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian) to the list of offenses requiring registration.

The act adds several new definitions to the sex offender registry statutes as follows:

- **"Electronic mail"** - the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.
- **"Entity"** - a business or organization that provides Internet service, electronic communications service, remote computing service, online service, electronic mail service, electronic instant message, or chat services whether the business or organization is within or outside the State.

- **"Instant Message"** - a form of real-time text communication between two or more people. The communication is conveyed via computers connected over a network such as the Internet.
- **"Internet"** - the global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described in this subdivision.
- **"Online identifier"** - electronic mail address, instant message screen name, user ID, chat or other Internet communication name, but it does not mean social security number, date of birth, or pin number.

The act amends the list of information that must be provided to the sheriff by a sex offender required to register to require that the sex offender provide any online identifier that the person uses or intends to use. A sex offender who changes an online identifier, or obtains a new online identifier, must report in person to the sheriff within 10 days to provide the new or changed information. The information on the address verification form for registered sex offenders must include indication of whether the person still uses or intends to use any online identifiers last reported to the sheriff and to require any new or different online identifiers be provided to the sheriff. Additionally, a Class F felony is created for failure to inform the registering sheriff of any new or changes to existing online identifiers that the person uses or intends to use. The changes also specify that the photograph and fingerprints required for sex offender registration will be taken by the sheriff without charge.

The act charges the Division of Criminal Statistics with the responsibility to maintain a system allowing an entity to access a list of online identifiers of persons in the central sex offender registry and authorizes the Division of Criminal Statistics to release registry information regarding a registered offender's online identifier to an entity for the purpose of allowing the entity to prescreen users or to compare the online identifier information with information held by the entity. An entity may apply to the Division for access to the information and may be granted access to the information upon compliance with the criteria developed by the Division and payment of a fee of \$100 annually. The criteria developed by the Division must include a requirement that the information obtained from the Statewide registry must not be disclosed for any purpose other than for prescreening its users or comparing the database of registered users of the entity against the list of online identifiers of persons in the Statewide registry.

An entity that receives (i) a complaint that a person uses its services to solicit a minor by computer to commit an unlawful sex act; or (ii) a report that a user may be violating the statutes prohibiting sexual exploitation of a minor by posting or transmitting material that contains a visual representation of a minor engaged in sexual activity; must report that information and the online identifier information of the person allegedly committing the offense, including whether that online identifier is included in the Statewide registry, to the Cyber Tip Line at the National Center for Missing and Exploited Children, which must forward that report to an appropriate law enforcement official in this State. The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

An entity that complies with this section in good faith is immune from civil or criminal liability resulting from either of the following:

- The entity's refusal to provide system service to a person on the basis that the entity reasonably believed that the person was subject to registration under State sex offender registry laws.
- A person's criminal or tortious acts against a minor with whom the person had communicated on the entity's system.

The act also requires the Administrative Office of the Courts, in consultation with the North Carolina Department of Justice, North Carolina Department of Correction, and the North Carolina Sheriffs' Association, to develop a procedure to ensure timely notification to the Division of Criminal Information and to sheriffs regarding any person subject to sex offender registration who does not receive an active term of imprisonment.

The act appropriates \$250,000 for fiscal year 2008-2009 to the Governor's Crime Commission to be used as matching grants in amounts up to \$25,000 to eligible sheriffs' offices to assist with the enforcement of the State's sex offender laws. The Commission must establish criteria as provided in this section.

The provision requiring the Administrative Office of the Courts to develop a timely notification procedure became effective August 16, 2008. The appropriation to the Governor's Crime Commission became effective July 1, 2008. The remainder of this act becomes effective May 1, 2009, and applies to persons who are required to be registered under Article 27A of Chapter 14 of the General Statutes on or after that date. The requirements related to online identifiers apply to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after May 1, 2009, and to persons who are registered under Article 27 of Chapter 14 of the General Statutes prior to May 1, 2009, and continue to be registered on May 1, 2009. However, any person registered under Article 27 of Chapter 14 of the General Statutes prior to May 1, 2009, and continuing to be registered on May 1, 2009, is not in violation of the online identifier requirements if the person provides the required information at the first verification of information that occurs on or after May 1, 2009. (SS)

Studies

Legislative Research Commission

Criminal Law Studies

S.L. 2008-181, Secs. 2.1(1)a, 2.1(1)b, 2.1(1)c, and 2.3 (HB 2431, Secs. 2.1(1)a, 2.1(1)b, 2.1(1)c, and 2.3) authorize the Legislative Research Commission to study the following criminal law issues:

- Prohibiting the execution of severely mentally disabled individuals.
- The felony murder rule.
- Reporting the denial of some pistol permits.
- Streamlining the determination of whether a first degree murder case may be tried as a capital case.

These sections became effective August 4, 2008. (WGR)

New/Independent Studies/Commissions

Committee on Civil Commitment of Sexual Predators Determined to be Incapable of Proceeding to Trial

S.L. 2008-181, Part XXXIX (HB 2431, Part XXXIX) creates the Joint Legislative Study Committee on Civil Commitment of Sexual Predators Who Are Determined to be Incapable of Proceeding to Trial. The Committee is directed to study the State's current laws relating to defendants who are determined to be incapable of proceeding to trial and relating to involuntary commitment, and consider whether the current laws are adequate to address public safety issues raised by defendants who:

- Are charged with committing a sex offense against a child.

- Are found to be incapable of proceeding to trial.
 - Do not meet criteria for involuntary commitment.
- This part became effective August 4, 2008. (WGR)

Chapter 9

Education

Dee Atkinson (DA), Drupti Chauhan (DC), Shirley Iorio (SI),
Sara Kamprath (SK), Kara McCraw (KM)

Enacted Legislation

Public Schools

Board Certified Teachers Serve as Full-Time Mentors

S.L. 2008-86 (HB 2360) allows a local board of education to assign to serve as full-time mentors the greater of 5 or 5% of the number of National Board Certified teachers (NBPTS) it has employed during the school year immediately preceding the assignment of teachers as full-time mentors. To be eligible to serve as a full-time mentor, NBPTS teachers must teach in a classroom for at least two years after receiving NBPTS certification and must have completed the mentor training required by the teacher's LEA.

NBPTS teachers assigned to serve as full-time mentors:

- May serve as a full-time mentor for up to three consecutive years.
- Must teach in a classroom for at least three years after serving as a full-time mentor to be eligible for reassignment as a full-time mentor.
- Must be school-based, work at one or more schools, and mentor each year at least 15 newly-hired teachers who are in their first through third year of teaching.
- Must continue to receive the 12% salary differential.

The State Board of Education is required to monitor and assess the effectiveness and impact of allowing National Board Certified teachers to serve in this capacity and report its findings to the Joint Legislative Education Oversight Committee prior to April 15, 2010.

This act became effective July 1, 2008. (SI)

Students with Disabilities and Special Education Changes

S.L. 2008-90 (HB 12) makes the following changes to the statutes addressing education of students with disabilities:

Amends the definition of "educational services" so that behavior intervention services that are provided as part of "educational services" are provided to the extent required by federal law.

- Allows the continued appropriateness of the homebound instruction for discipline purposes of a student with disabilities to be evaluated monthly by a designee of the student's IEP (Individualized Education Program) team rather than by the head of the IEP team.
- Adds a protection for children not yet determined eligible for special education. A local educational agency is deemed to have a "basis of knowledge that a child is a child with a disability if, prior to the behavior that precipitated the disciplinary action, the behavior and performance of the child clearly and convincingly establishes the need for special education."

The act also requires that the Department of Public Instruction and the State Board of Education report to the Joint Legislative Education Oversight Committee on the number of

contested cases that are filed as a result of the legislation and the disposition of those cases. The report is due by January 15, 2011.

The provision that adds a protection for children not yet determined eligible for special education becomes effective January 1, 2009, and expires on March 1, 2011. The remainder of this act became effective on July 11, 2008. (SK)

Funds to Implement the ABCs of Public Education

S.L. 2008-107, Sec. 7.3 ([HB 2436](#), Sec. 7.3) requires the State Board of Education (State Board) to use the funds appropriated for State Aid to Local School Administrative Units to provide incentive funding for schools that met or exceeded the projected levels of improvement in student performance for the 2007-2008 school year in accordance with the ABCs of Public Education Program (Program).

Incentive awards in schools that achieved higher than expected improvements may be:

- Up to \$1,500 for each teacher and certified personnel.
- Up to \$500 for each teacher assistant.

Incentive awards in schools that met the expected improvements may be:

- Up to \$750 for each teacher and certified personnel.
- Up to \$375 for each teacher assistant.

The State Board must limit the amount expended for the Program to the average expenditure for the Program over the last 11 years (\$94,325,612). The State Board may use funds appropriated to the State Public School Fund to implement the consolidated assistance program and report any restructuring of the consolidated assistance program to the Joint Legislative Education Oversight Committee by January 15, 2009.

This section became effective July 1, 2008. (DC)

Allotment for Mentoring Services

S.L. 2008-107, Sec. 7.8 ([HB 2436](#), Sec. 7.8) requires the State Board of Education (State Board) to allot mentoring services funds to local school administrative units (LEAs) based on the highest number of employees in the preceding three years who are both (i) paid with State, federal, or local funds and (ii) teachers paid on the first or second step of the teacher salary schedule or instructional personnel paid on the first step of the instructional support personnel salary schedule. LEAs must use the funds to provide mentoring support to eligible employees in accordance with a plan approved by the State Board. The plan must include information on adequate training for mentors.

This section became effective July 1, 2008. (KM)

Reestablish Committee on Dropout Prevention/Dropout Prevention Technical Correction/Change Reporting Requirements of the Joint Legislative Commission on Dropout Prevention and High School Graduation

S.L. 2008-107, Secs. 7.14 and 7.14A ([HB 2436](#), Secs. 7.14 and 7.14A) and S.L. 2008-181, Part XXXV ([HB 2431](#), as amended by S.L. 2008-118, Sec. 1.3(c) ([HB 2438](#), Sec. 1.3(c), and S.L. 2008-181, Part XXXV ([HB 2431](#), Part XXXV) address changes to the dropout prevention grants, the Committee on Dropout Prevention and the Joint Legislative Commission on Dropout Prevention and High School Graduation. The Committee on Dropout Prevention (Committee) is reestablished to determine which local school administrative units, schools, agencies, and nonprofits will receive dropout prevention grants provided by these sections, the amount of each grant, and eligible uses of the grant funding. The Committee is encouraged to use individuals

who represent public schools, universities, and community-based organizations when using outside grant reviewers and raters. The Committee will continue to be located administratively in the Department of Public Instruction (DPI) but will exercise its powers and duties independently of DPI. The Committee may contract with an independent consultant to assist in the evaluation of the impact of the grants awarded. DPI must provide for the administrative costs of the Committee and provide technical assistance to the grant recipients.

Categories of Grant Recipients - The Committee must select grant recipients from the following three categories:

- Applications received by the original Committee created under Sec. 7.32(d) of S.L. 2007-323: The Committee must establish a new cutoff score and award grants to applicants that meet the new cutoff score and did not receive funding from the original Committee.
- Recipients of grants awarded by the original Committee: The Committee must establish a process to award additional funds to those recipients. Priority for additional funding for grants awarded under S.L. 2007-323 must be given to programs that will serve students in local schools that have a four-year cohort graduation rate of less than 65%.
- New applicants: Using the process from S.L. 2007-323 and consistent with this section, the Committee may award grants to new applicants that did not apply for funding under S.L. 2007-323.

Criteria for Approved Grants - The act established specific criteria that apply to all types of dropout prevention grants approved by the Committee:

- Grants must be issued in varying amounts up to \$150,000.
- Grants must be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to be effective, sustainable, and coordinate dropout prevention and reentry programs for middle and high schools and serve as effective models for other programs.
- Priority must be given to new programs and initiatives or to those that have begun within the last five school years.
- Grants must be distributed geographically throughout the State and throughout the eight educational districts, with no more than three grants to be awarded in any one county in a single fiscal year.
- Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations.
- Grants must be awarded to programs and initiatives that hold all students to high academic and personal standards.
- Grant applications must include all of the following:
 - How grant funds will be used.
 - What, if any, other resources will be used in conjunction with the grant funds.
 - How the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community.
 - A process for evaluating the success of the program or initiative.
- Programs and initiatives that receive grants must be based on best practices for helping at-risk students achieve successful academic progress, preventing students from dropping out of school, or for increasing the high school completion rate for those students who already have dropped out of school.
- Priority must be given to proposals that demonstrate input from the local community and coordination with other available programs or resources.
- Grantees must comply with applicable laws and rules regulating conflict of interest.
- Priority for grants must be given to programs that will serve students in schools that have a 4-year cohort graduation rate of less than 65% and that are from counties that did not receive funding under S.L. 2007-323. The Committee must establish a grant rating cutoff score at such a level as to allow for consideration of all viable

grants in this priority category and may require grantees to provide supplemental information in response to prior reviewer comments.

- The demonstrated need for a grant, level of collaboration, ability to increase attendance, persistence, academic success, ability to increase parental involvement, and graduation must be given more weight than the quality of the written grant application.
- Grants must be made no later than November 1, 2008.

Evaluation of Awarded Grants - The Committee must evaluate the impact of the grants awarded under S.L. 2007-323 and under this section. In evaluating the grants, the Committee must consider the following:

- How the grant funds were used, including the services provided for teen pregnancy prevention and for pregnant and parenting teens.
- The success of the program as indicated by the evaluation process stated in the grant application.
- The extent to which the program improved student attendance, test scores, persistence, and graduation rates.
- How the program was coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community.
- Any other resources that were used in conjunction with the grant funds.
- The sustainability of the program.
- The number, gender, ethnicity, and grade level of students being served, as well as whether students left school due to pregnancy or parenting responsibilities.
- The potential for the program to serve as a model for achieving successful academic progress for at-risk students.
- Other indicators of the impact of the grant on dropout prevention.

Reporting Requirements for the Committee and Grant Recipients

- The Committee must report to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee on the grants awarded by March 1, 2009.
- Recipients of the grants awarded under S.L. 2007-323 must report to the Committee by January 31, 2009, and September 30, 2009. The reports must provide information to assist the Committee in its evaluation and include a statement that the recipients used grant funds for the purposes appropriated and complied with applicable laws, terms, and conditions of the grant documents.
- The Committee must make an interim report of the evaluations of the grants awarded under S.L. 2007-323 by March 31, 2009, and a final report by November 15, 2009 to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee.
- Recipients of the grants awarded under this section must report to the Committee by January 31, 2010, and September 30, 2010. The reports must provide information to assist the Committee in its evaluation and include a statement that the recipients used grant funds for the purposes appropriated and complied with applicable laws, terms, and conditions of the grant documents.
- The Committee must make an interim report of the evaluations of the grants awarded under this section by March 31, 2010, and a final report by November 15, 2010, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee.

Reporting Requirements for the Joint Legislative Commission on Dropout Prevention and High School Graduation (Commission)

- The Commission must study the development of an effective network for the purpose of sharing best practices among the grant recipients, public schools, and other interested organizations. The Commission may consult with DPI and the Committee

and must report its findings and any recommendations to the 2009 General Assembly.

- The Commission must submit an interim report of its findings and recommendations on or before the convening of the 2009 General Assembly.
- The Commission may submit an interim report to the Joint Legislative Education Oversight Committee and the General Assembly by May 1, 2010.
- The Commission must submit a final report of its findings and recommendations on or before the convening of the 2011 Session of the General Assembly. The Commission terminates upon the filing of the final report.

These requirements are from Part XXXV of S.L. 2008-181.

Funding Requirements

- For the 2008-2009 fiscal year, of the funds appropriated for the Committee, \$5,500,000 must be used to award grants to applicants that did not previously receive funding under S.L. 2007-323. The remainder must be used to award new grants and additional grants to previous grant recipients.
- Funds appropriated for the grants for the 2007-2008 fiscal year will not revert and will remain available for expenditure until August 31, 2009. Funds appropriated for the 2008-2009 fiscal year will not revert and will remain available for expenditure until August 31, 2010.
- Of the funds appropriated for the dropout prevention grants, \$100,000 for the 2008-2009 fiscal year may be used to issue a request for proposals from qualified vendors on a competitive basis to contract as a consultant to assist with the evaluation of the grants.
- Of the funds appropriated for the dropout prevention grants, up to \$50,000 may be used by DPI for administrative assistance to the Committee and to provide technical assistance.

This section became effective July 1, 2008. The subsection that appropriates funds for (i) the grants for the 2007-2008 fiscal year that do not revert and remain available for expenditure until August 31, 2009 and (ii) the 2008-2009 fiscal year that do not revert and remain available for expenditure until August 31, 2010, became effective June 30, 2008. The provisions that provides for the interim and final reports by the Commission became effective August 4, 2008. (DC)

More at Four Program

S.L. 2008-107, Sec. 7.17 (HB 2436, Sec. 7.17), as amended by S.L. 2008-181, Sec. 49.1 (HB 2431, Sec. 49.1) makes the following changes related to the More at Four Program:

- Extends through the 2008-2009 fiscal year a county's ability to appeal to the Office of School Readiness for an exemption to the local required amount of contribution for additional More at Four slots. The county may appeal based on a demonstrated lack of additional resources necessary to provide the required local contribution for the additional More at Four slots allocated for the 2007-2008 or 2008-2009 fiscal years.
- Requires the Office of School Readiness to develop a plan to tier local More at Four slots in child care facilities, based on child care subsidy market rates, and to report on the plan by January 1, 2009, to the House Appropriations Subcommittee on Education, House Appropriations Subcommittee on Health and Human Services, Senate Appropriations Committee on Education, Senate Appropriations Committee on Health and Human Services, Joint Legislative Education Oversight Committee, and Fiscal Research Division.
- Requires a system of accountability, including a yearly review, of the More at Four program. An independent research organization must be contracted with to produce an annual report, including a longitudinal review of the program, academic, behavioral and other child-specific outcomes, and a test of the feasibility of

conducting a quasi-experimental research design with representative samples of both children who complete and children who do not participate in a More at Four program. The review must be presented by January 31 annually to the Joint Legislative Education Oversight Committee.

This section became effective July 1, 2008. (KM)

Plant Operation Funding

S.L. 2008-107, Sec. 7.18 (HB 2436, Sec. 7.18) allows the State Board of Education to allocate up to \$1 million per year from the Public School Capital Building Fund to the Department of Public Instruction. These funds must be used by the Plant Operation Section of the School Support Division to assist each local school administrative unit with effective energy and environmental management, effective water management, hazardous material management, clean air quality, and engineering support. The Department of Public Instruction must report annually to the Joint Legislative Education Oversight Committee by April 15 on the effectiveness of the program.

This section became effective July 1, 2008. (SK)

Increases in Student Population Due to Base Realignment and Closure Activity

S.L. 2008-107, Sec. 7.23 (HB 2436, Sec. 7.23) requires the State Board of Education (State Board) to allot additional teachers to a local school administrative unit, if a local school administrative unit employs more classroom teachers than are allotted to it, due to a projected increase in student population resulting from Base Realignment and Closure (BRAC) activity. The additional teachers allotted by the State Board must be based on the greater of:

- The local school administrative unit's first month average daily membership (ADM), or
- 50% of the projected increase in the ADM resulting from BRAC activity that is in excess of the increase anticipated in the allotted ADM.

On or before the distribution of the initial allotments, the Department of Public Instruction is required to notify each impacted local school administrative unit of the BRAC population increase that exceeds the allotted ADM.

Section 7.15(b) of S.L. 2007-323, pertaining to discrepancies between anticipated and actual ADM, does not apply to local school administrative units receiving an additional allotment of teachers under this section.

This section became effective July 1, 2008. (TM)

Child Nutrition

S.L. 2008-107, Sec. 7.25 (HB 2436, Sec. 7.25) extends to the end of the 2009-2010 school year the time by which all elementary schools must achieve a basic level of the nutrition standards adopted by the State Board of Education. However, local school administrative units are encouraged to take steps to implement within existing funds and to the extent possible the nutrition program standards by the end of the 2008-2009 school year.

This section became effective July 1, 2008. (SI)

Jessica Lunsford Act for North Carolina

S.L. 2008-117, Secs. 12.1 and 21 ([HB 933](#), Secs. 12.1 and 21) address issues concerning persons on sex offender registries.

Section 12.1 authorizes local boards of education to expel students who are subject to the statutes making it unlawful for certain registered sex offenders to be on certain premises, including schools. A local board of education's decision to expel a student must be based on clear and convincing evidence and prior to ordering the expulsion of a student, the local board of education must consider whether there is an alternative program that can be offered by the local school administrative unit to provide educational services to the student. If the local board of education determines that the student will be provided educational services on school property, the student must be under the supervision of school personnel at all times.

Section 21 directs local boards of education to require that employers of contractual personnel conduct annual checks of the contractual personnel on the following: State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. "Contractual personnel" is defined as any individual (i) who is under contract with the local board of education; (ii) whose contractual job involves direct student interaction as a part of the job; and (iii) who is not covered under the school personnel criminal history check statute. As a term of any contract, a local board of education must prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students.

These sections become effective December 1, 2008. (DC)

Section 12 of this act relates to sex offenders on educational property. For additional information on this section and the remainder of this act, see **Criminal Law and Procedure**.

School Bus Exempt from Duplicate Inspection

S.L. 2008-172 ([HB 2265](#)). See **Transportation**.

Children with Disabilities in Residential Treatment Program

S.L. 2008-174 ([HB 2306](#)) requires the State Board of Education (State Board) and the Department of Health and Human Services (DHHS) to determine the agency responsible for providing special education and related services to children with disabilities placed in private psychiatric residential treatment facilities by public agencies other than the local educational agency.

The State Board and DHHS must report the determination of the responsible agency and any recommended legislation or policy changes to the Joint Legislative Education Oversight Committee and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by January 1, 2009.

This act became effective August 4, 2008. (SK)

Interstate Compact/Education of Military Children

S.L. 2008-185 ([SB 1541](#)) enacts the Interstate Compact on Educational Opportunity for Military Children (Compact). The purpose of the Compact is to remove educational barriers that may exist for children of military families due to frequent moves and parental deployment by facilitating enrollment, record transfer, student placement, eligibility for extracurricular activities, and on-time graduation. The Compact provides for the promulgation and enforcement of administrative rules and uniform collection and sharing of information, as well as promotion of flexibility and cooperation between the educational system, parents, and students.

Applicability - The Compact applies to children of the following:

- Active duty members of the uniformed services.
- Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement.
- Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

Education Records, Enrollment, and Eligibility

- Unofficial records: If official records cannot be released to parents, a complete set of unofficial records must be provided by the sending state to the parents. Upon receipt of the unofficial records, the receiving state must enroll and place the student based on the unofficial records pending validation by the official records.
- Official records: Once a student is enrolled and conditionally placed, the receiving state must request the official record from the sending state. The sending state must furnish the official records in 10 days.
- Immunizations: Compact states must allow 30 days from the date of enrollment for students to obtain or begin required immunizations.
- Enrollment: Students covered by the Compact are eligible to enroll tuition-free in a local school administrative unit where they are not a domiciliary, if the student has not been expelled or suspended, and the appropriate affidavit has been completed and filed by the parent and adult caregiver.
- Kindergarten and first grade entrance age: Students must be allowed to continue enrollment in the receiving state at the same grade level as enrolled in the sending state, regardless of age.
- Extracurricular participation: State and local education agencies (LEAs) must facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadline, to the extent otherwise qualified.

Placement and Attendance

- Course/education program placement: A receiving state must initially honor student placement in courses or educational programs based on enrollment or testing placement from a sending state, but receiving states are not precluded from performing subsequent evaluations to ensure appropriate placement and continued enrollment of students in courses.
- Special education services: In compliance with federal laws regarding the Individuals with Disabilities Education Act and Americans with Disabilities Act, receiving states must make reasonable accommodations and modifications for students with disabilities subject to existing plans established in sending states.
- Placement flexibility: LEAs have flexibility to waive course/program prerequisites.
- Absences related to deployment activities: A student whose parent is on active duty and has been called to duty, is on leave, or has immediately returned from deployment to a combat zone or combat support posting, must be granted additional excused absences in the local superintendent's discretion to visit with the active duty parent.

Graduation

- Waiver Requirements: LEAs must waive specific courses required for graduation for children of military families if similar course work has been satisfactorily completed elsewhere. Otherwise, the LEA must provide a reasonable justification for the denial. If a waiver is not granted to a student who would qualify to graduate from a sending school, the receiving LEA must provide alternative means to acquire the coursework so graduation can occur on time.
- Exit Exams: States must accept: (i) exit or end-of-course exams required for graduation from the sending state, (ii) national norm-referenced tests, or (iii)

alternative testing, in lieu of testing requirements for graduation in the receiving state.

- **Senior Year Transfers:** If a child of a military family transferring during the senior year is ineligible to graduate from the receiving LEA after alternatives have been considered, the sending and receiving LEAs must ensure receipt of a diploma from the sending LEA if the student meets all of those graduation requirements.

Member states are required to establish a State Council to provide coordination of participation among LEAs, government agencies, and military installations. The act also creates an Interstate Commission on Educational Opportunity for Military Children (Commission) which, among other things, establishes a process for informing the Commission of alleged violations. However, no private right of action against the Commission, member states, or LEAs is created. The act sets forth the powers and duties of the Commission and provides for the organization and operations, as well as the rulemaking functions of the Commission. The act also sets up a governance structure for the Commission that includes oversight, enforcement, dispute resolution, financing, amendments, withdrawals, and dissolution.

The act states that it is the goal of the General Assembly to appropriate \$25,000 to offset the cost of implementation of the Compact for low-wealth schools beginning with the 2009-2010 school year. The terms of the compact became effective upon enactment by 10 states. The 10th state enacted the compact on July 11, 2008.

This act became effective August 7, 2008. (DC)

School Administrator Qualifications

S.L. 2008-187, Sec. 43 ([SB 1632](#), Sec. 43) establishes the qualifications for certification as a school administrator. To qualify for certification, an individual must submit a completed application to the State Board of Education (State Board), pay applicable fees, pass the exam adopted by the State Board, have a bachelor's degree from an accredited college or university, and have at least one of the following:

- A graduate degree from a public school administration program meeting standards established by the State Board.
- A master's degree from an accredited college or university and, by December 31, 1999, completion of a public school administration program that meets standards set by the State Board.
- Education and training determined by the State Board as equivalent.

This section became effective August 7, 2008. (KM)

Some Personal Leave Time/No Penalty

S.L. 2008-209 ([HB 15](#)) and S.L. 2008-107, Sec. 26.21 ([HB 2436](#), Sec. 26.21) allow teachers to take personal leave on certain days and receive their full salary with no substitute deduction:

- **From August 9, 2008, until June 30, 2009** - Teachers may take up to one personal leave day per year, not including non-protected teacher workdays, and receive full salary with no substitute deduction. In addition, teachers who take personal leave days on non-protected teacher workdays also receive full salary.
- **From July 1, 2009, and thereafter** - Teachers who take personal leave days on non-protected teacher workdays must receive full salary with no substitute deduction.

This act became effective August 9, 2008, except as otherwise provided. (SI)

Higher Education

Higher Education Bond Oversight Committee Reporting and Meeting Requirements

S.L. 2008-84 ([SB 1825](#)) changes the reporting requirements for the Higher Education Bond Oversight Committee (HEBOC) so that it reports on an annual basis to the Board of Governors of The University of North Carolina, the State Board of Community Colleges, and the Joint Legislative Commission on Governmental Operations rather than on a semiannual basis. The act also changes the meeting requirements of the HEBOC so that it must meet twice per year rather than once per quarter.

This act became effective July 11, 2008. (SK)

Student Loan Repayment for North Carolina Guard Members

S.L. 2008-94 ([HB 1304](#)). See **Military, Veterans', & Indian Affairs**.

Private College Student Eligibility for EARN Scholarships

S.L. 2008-107, Sec. 9.2(a) ([HB 2436](#), Sec. 9.2(a)) includes certain private educational institutions in the list of eligible postsecondary institutions that a student may attend and receive grants from the Education Access Rewards North Carolina Scholars Fund (EARN Scholars Fund). Eligible private educational institutions are those defined in statute, requiring that the private educational institution have a main permanent campus located in North Carolina, be accredited under certain standards, award postsecondary degrees, and not be a seminary, Bible school, Bible college, or similar religious institution.

S.L. 2008-107, Sec. 9.2(b) ([HB 2436](#), Sec. 9.2(b)) specifies that funds appropriated from the Escheat Fund to the EARN Scholars Fund cannot be used for grants awarded to students attending private educational institutions. The section clarifies that funds appropriated from the General Fund to the EARN Scholars Fund may be used to award grants to students attending private educational institutions.

These sections became effective July 1, 2008, and apply only for academic years beginning on or after July 1, 2008. (KM)

The University of North Carolina-North Carolina Community College System 2+2 E-Learning Initiative

S.L. 2008-107, Sec. 9.7 ([HB 2436](#), Sec. 9.7) provides that monies appropriated to The University of North Carolina (UNC) and the North Carolina Community College System (NCCCS) for the UNC-NCCCS 2+2 E-Learning Initiative (Initiative) must be used to fund further development of online courses for 2+2 programs. Based upon mutual agreement by the State Board of Education Chairman and the Presidents of UNC and NCCCS as to the areas of greatest need, including math and science teacher licensure, the funds must be used to support joint technology development, systems to track student progress, articulations between community colleges and constituent institutions, and to develop technology needed to support online courses and 2+2 programs.

UNC and NCCCS must use the funds first to develop online teacher education programs. UNC and NCCCS must report annually by September 1, 2008, to the Joint Legislative Education Oversight Committee, the State Board of Education, the Office of State Budget and Management,

and the Fiscal Research Division of the General Assembly on the implementation of the Initiative. The report must include:

- The courses and programs within the Initiative.
- The total number of prospective teachers that have taken part in the Initiative in the current academic period and previous academic periods since the Initiative's inception.
- The total number of teachers currently teaching in each local school administrative unit who have taken part in the Initiative.
- The change in the number of teachers available to schools since the beginning of the Initiative.
- Qualitative data on the impact of the Initiative on the State's teaching pool.
- An explanation of the expenditures and collaborative programs between UNC and NCCCS.

This section became effective July 1, 2008. (DC)

Scholarships for Children of War Veterans

S.L. 2008-107, Sec. 19.2 ([HB 2436](#), Sec. 19.2). See **Military, Veterans', & Indian Affairs**.

Fee Waiver/The University of North Carolina and Community Colleges

S.L. 2008-135 ([HB 1076](#)) provides that persons age 65 and older, who qualify as legal residents of North Carolina and residents for tuition purposes, are permitted to attend classes at any constituent institution of The University of North Carolina or community college for up to 6 hours of credit or noncredit purposes each academic semester without the required payment of fees. Textbooks, computer use and technology fees, and community college course specific fees are excluded from the waiver.

This section became effective August 1, 2008, and applies to classes for any academic semester beginning on or after that date. (KM)

Community Colleges

Community Colleges/Tobacco Free

S.L. 2008-95 ([SB 1669](#)). See **Health and Human Services**.

Report on Effect of Additional Allied Health Funding

S.L. 2008-107, Sec. 8.3 ([HB 2436](#), Sec. 8.3) requires the Community College System Office to report on the impact of additional funding received for nursing and allied health programs for the fiscal years 2006-2007, 2007-2008, and 2008-2009, including the number of full-time equivalent students enrolled, the number of qualified applicants not admitted due to program capacity constraints, the performance of students on nursing licensure exams, and the average salary for allied health faculty by education level. The report must be made by March 1, 2009, to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management.

This section became effective July 1, 2008. (KM)

Consolidate Workforce Development Programs

S.L. 2008-107, Sec. 8.7 (HB 2436, Sec. 8.7) creates the Customized Training Program by consolidating the New and Expanding Industry Training Program, the Focused Industrial Training Program, and the Customized Industry Training Program. In addition to other current requirements to qualify for assistance, the President of the North Carolina Community College System also must determine that the business or individual is creating jobs, expanding an existing workforce, or enhancing the productivity and profitability of operations within the State.

The State Board of Community Colleges (State Board) may adopt rules and guidelines to allow funds appropriated for the Customized Training Program and the Focused Industrial Training Program to be used to support training projects for the United States Armed Forces. Funds available to the Customized Training Program will not revert at the end of a fiscal year but remain available until expended. Up to 10% of the college-delivered training expenditures and up to 5% of the contractor-delivered training expenditures for the previous fiscal year for Customized Training may be allotted to each college to build capacity at that college. The State Board may approve the use of up to 8% of the funds appropriated in a fiscal year for training regional community college personnel to deliver services.

This section became effective July 1, 2008. (SK)

Clarify Use of Fees Collected for General Education Development Testing

S.L. 2008-107, Sec. 8.11 (HB 2436, Sec. 8.11) clarifies that the State Board of Community Colleges may retain any budget fees charged to students taking the General Education Development (GED) test. Fees collected for this purpose must be used to do all of the following:

- Offset the costs of the GED test, including the cost of the scoring of the test.
- Offset the costs of printing the GED certificates.
- Meet federal and State reporting requirements related to the test.

This section became effective July 1, 2008. (DC)

No Fees for First Aid Courses Taken by School Employees

S.L. 2008-107, Sec. 8.17 (HB 2436, Sec. 8.17) allows the State Board of Community Colleges to waive the registration fee for elementary and secondary school employees who enroll in first aid and CPR courses at one of the campuses.

This section became effective July 1, 2008. (SK)

Students in the Gateway to College Program May Enroll in Developmental Courses

S.L. 2008-107, Sec. 8.18 (HB 2436, Sec. 8.18) directs the State Board of Community Colleges to allow high school students who are enrolled in Gateway to College Programs to enroll in developmental courses based on an assessment of their individual student needs by a high school and community college staff team. The State Board of Community Colleges must include this coursework in computing the budget full-time equivalent enrollment for the colleges.

This section became effective July 1, 2008. (SI)

Universities

Eliminate Coaching Scholarship Loan Program/Transfer Fund Balance to General Fund

S.L. 2008-107, Sec. 9.1 (HB 2436, Sec. 9.1) repeals the law which established the Physical Education – Coaching Scholarship Loan Fund (Fund). This Fund provided scholarship loans to students who pursued college degrees to become public school teachers and coaches or assistant coaches. All financial obligations to any student awarded a scholarship loan from the Fund before July 1, 2008, must be fulfilled if the student remains eligible under the provisions of the Fund. All contractual agreements between a student awarded a scholarship loan from the Fund before July 1, 2008, and the State Education Assistance Authority remain enforceable, and the statutory provisions that would be applicable but for this repeal remain applicable for any scholarship loan awarded before July 1, 2008. The unencumbered balance in the Fund reverted to the General Fund June 30, 2008.

This section became effective July 1, 2008. (DC)

Closing the Achievement Gap/Grants

S.L. 2008-107, Sec. 9.3 (HB 2436, Sec. 9.3) provides that North Carolina Central University may use up to 15% of the funds appropriated for the 2008-09 fiscal year for the "Closing the Achievement Gap" initiative for administrative costs and at least 85% of the funds for grants to participating public and private historically minority colleges and universities. These funds are to be used to implement after-school programs designed to close the academic achievement gap and improve the academic performance of at-risk students. North Carolina Central University must report on the number of grants awarded, grant recipients, amount of the grants, purpose of the grants, and administrative costs for the grants by April 1, 2009, to the Joint Legislative Education Oversight Committee and the Fiscal Research Division. Grant recipients also must report to the Joint Legislative Education Oversight Committee and Fiscal Research Division on the amount of the grant received, the program and purposes for which the grant was requested, the methodology used to implement the program, and results of the program.

This section became effective July 1, 2008. (SK)

Optional Scholarship for Certain Graduates of the Principal Fellows Program

S.L. 2008-107, Sec. 9.4 (HB 2436, Sec. 9.4) authorizes the North Carolina Principal Fellows Commission (Commission), in collaboration with the State Education Assistance Authority, to make available an optional 6-month scholarship in the amount of \$20,000 to any person who was a recipient of a scholarship loan through the Principal Fellows Program and who (i) was in Class 10 of the Principal Fellows Program for the 2003-2004 academic year, (ii) completed the Principal Fellows Program, and (iii) has served either as a school administrator for 4 years at a North Carolina public school or at a school operated by the United States government in North Carolina, or who has had the loan forgiven by the State Education Assistance Authority.

A person may be eligible for the optional six-month scholarship only after fulfilling all contractual obligations agreed to by the person upon receipt of the original scholarship loan awarded to the person. Exclusive of any deferment for extenuating circumstances, a person remains eligible for the optional six-month scholarship for two years after the six-year period of time allowed for the person to satisfy the original scholarship loan requirements. The State Education Assistance Authority may extend the period of time for which a person remains eligible

for the optional six-month scholarship for a reasonable period of time, if a person presents extenuating circumstances.

The Commission must develop the criteria for awarding the scholarship, including a requirement that the person agree to work at least another six months as a school administrator in a North Carolina public school or at a school operated by the United States government in North Carolina after satisfying the four-year work requirement. The Commission also must develop a process for evaluating a scholarship recipient's work performance and for issuing a final approval and certification of the work performance. The State Education Assistance Authority must perform all of the administrative functions necessary to implement this scholarship, including rulemaking.

This section became effective July 1, 2008. (SI)

The University of North Carolina Enrollment Growth Request

S.L. 2008-107, Sec. 9.8 ([HB 2436](#), Sec. 9.8) requires the Board of Governors of The University of North Carolina to provide full documentation and justification of any enrollment change funding request at the time it is recommended, including the most recent academic year's actual enrollment numbers in the same format as the growth increase request is made. Actual enrollment numbers must be the actual student credit hours or full-time equivalencies.

This section became effective July 1, 2008. (KM)

Legislative Tuition Grant/Redefine Part-Time Student

S.L. 2008-107, Sec. 9.11 ([HB 2436](#), Sec. 9.11) reduces from nine to six the number of credit hours an undergraduate student or licensure student must take per semester to be considered a part-time student eligible for a legislative tuition grant. A part-time North Carolina undergraduate student who is enrolled to take at least six hours of academic credit per semester and a part-time licensure student who is enrolled to take at least six hours of undergraduate academic credit per semester in a program intended to result in a license in teaching or nursing at an approved institution must be awarded a tuition grant in an amount that is calculated on a pro rata basis.

This section became effective July 1, 2008, and applies to academic semesters beginning on or after July 1, 2008. (SI)

Biennial Projection of The University of North Carolina Enrollment Growth

S.L. 2008-107, Sec. 9.15 ([HB 2436](#), Sec. 9.15) directs The University of North Carolina to provide, by September 1 of each even-numbered year, a projection of the total student enrollment in The University of North Carolina System that is anticipated for the next biennium to the Joint Legislative Education Oversight Committee and the Office of State Budget and Management. The enrollment projection must be divided into the following categories and must include the projected growth for each year of the biennium in each category at each of the constituent institutions:

- Undergraduate students.
- Graduate students (students earning master's and doctoral degrees).
- First-year professional students.
- Any other category deemed appropriate.

The projection also must distinguish between on-campus and distance education students. The Director of the Budget must consider the projections when determining the amount the Director proposes to fund as the continuation requirement for enrollment increases in The University of North Carolina System.

This section became effective July 1, 2008. (DC)

School of Arts/Name Change

S.L. 2008-192 ([SB 2015](#)) changes the name of the North Carolina School of the Arts to the University of North Carolina School of the Arts.

This act became effective August 1, 2008. (SI)

Allow The University of North Carolina to Create an Airport Authority

S.L. 2008-204, Part IV ([SB 1925](#), Part IV) allows the Board of Governors of The University of North Carolina to create one airport authority to support the missions of the University of North Carolina at Chapel Hill or the University of North Carolina Health Care System. The airport authority may be established only in Orange County and the sole purpose of the airport authority is to resite the Horace Williams Airport and operate the resited airport. The airport authority must be a political subdivision of the State and the territorial jurisdiction must be Orange County.

This part became effective August 8, 2008. (SK)

Interest Rate for Scholarship Loan Programs

S.L. 2008-204, Part V ([SB 1925](#), Part V) authorizes the State Education Assistance Authority to set the interest rate for 3 scholarship loan programs at a rate not to exceed 10% per year: the Nursing Scholars Program, the Graduate Nurse Scholarship Program for Faculty Production, and the Principal Fellows Program. For these three programs, the interest rate is currently statutorily set at 10% per year.

This part becomes effective January 1, 2009, and applies to all scholarship loans issued on or after July 1, 2009. (SK)

Studies

New/Independent Studies/Commissions

Higher Education Civic Education Study

S.L. 2008-181, Part XLVIII ([HB 2431](#), Part XLVIII) establishes the Higher Education Civic Education Study Commission (Commission) to advise the State on the role of higher education in helping to strengthen the ability of colleges and universities to participate in civic engagement activities with K-12 educational institutions, faith-based programs, or other programs affecting the social development and literacy of school-aged children. The Commission consists of 19 members: 8 members appointed by the President Pro Tempore of the Senate; 8 members appointed by the Speaker of the House of Representatives; and 3 members appointed by the Governor. The Commission members must include legislators and public members representing K-12 public education, institutions of public and private higher education, community-based service organizations, and faith-based community organizations.

The Commission must develop recommendations:

- For implementation of mandatory service-learning graduation requirements for higher education institutions receiving State funds.

- To include best practices for faculty, students, and community partners entering into service-learning relationships.
- To address the resources needed to assist higher education institutions in implementing service-learning partnerships.
- For monitoring and evaluating the impact of civic engagement programs on the performance of K-12 and higher education students.

The Commission must make a final report, including any proposed legislation, to the 2009 General Assembly upon its convening. The Commission will terminate upon the filing of its report or upon the convening of the 2009 General Assembly, whichever occurs first.

This part became effective August 4, 2008. (SK)

Referrals to Existing Commissions/Committees

Study of Changes Necessary to Improve Financial Aid to Community College Students

S.L. 2008-107, Sec. 8.15 ([HB 2436](#), Sec. 8.15) directs the Joint Legislative Education Oversight Committee to study the changes needed to improve financial aid for community college students. The study must include recommendations on how to better serve nontraditional students and how to increase the number of community colleges that participate in federal student loan programs.

This section became effective July 1, 2008. (DC)

Higher Education Studies/Distance Education

S.L. 2008-107, Sec. 9.10(a) ([HB 2436](#), Sec. 9.10(a)) directs the Joint Legislative Program Evaluation Oversight Committee to include in its 2009-2010 work plan for the Program Evaluation Division of the General Assembly a comparison of the start-up and on-going costs of distance education versus on-campus education. The Program Evaluation Division must submit the study to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division at a date determined by the Joint Legislative Program Evaluation Oversight Committee.

This section became effective July 1, 2008. (SK)

Higher Education Studies/The University of North Carolina Enrollment Growth Funding Formulas

S.L. 2008-107, Sec. 9.10(b) ([HB 2436](#), Sec. 9.10(b)) directs the Joint Legislative Program Evaluation Oversight Committee to include in its 2009-2010 work plan for the Program Evaluation Division of the General Assembly a comprehensive review of the full-time equivalencies (FTE) and student credit hours (SCH) enrollment growth funding formulas used by The University of North Carolina.

The Division must evaluate all of the following:

- Assumptions in each element of the funding formulas.
- Benchmark information related to specific elements.
- Comparison between FTE and SCH formulas.
- Formulas used by other states to fund university systems; how those formulas are used; success of those formulas in indicating future needs, providing equitable funding to the different types of institutions within a system; and types of support programs addressed by the formulas.

- Objectives the formulas are designed to meet and whether those accurately reflect The University of North Carolina System goals.
- How the current formulas can be modified or whether different formulas are needed to more accurately predict future financial needs for The University of North Carolina.

The Program Evaluation Division must submit the study to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division at a date determined by the Joint Legislative Program Evaluation Oversight Committee.

This section became effective July 1, 2008. (SK)

Study of Structure and Organization of the Department of Public Instruction

S.L. 2008-107, Sec. 9.14 ([HB 2436](#), Sec. 9.14) requires the Joint Legislative Program Evaluation Oversight Committee to include in the 2008-2009 work plan for the Program Evaluation Division of the General Assembly a review and study of the structure and organization of the Department of Public Instruction and the State Board of Education. The Program Evaluation Division must submit the study to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Education Oversight Committee, the Chairs of the Appropriations Committees of the Senate and the House of Representatives, and the Fiscal Research Division by December 31, 2008.

This section became effective July 1, 2008. (SI)

Dismissal, Demotion, or Suspension Without Pay of Non-certified School Employees

S.L. 2008-181, Sec. 5.2 ([HB 2431](#), Sec. 5.2) allows the Joint Legislative Education Oversight Committee (Committee) to study legal and policy issues relating to the dismissal, demotion, or suspension without pay of noncertified school employees and their current employment status as at-will employees. The Committee may consider whether noncertified employees should be dismissed, demoted, or suspended without pay only for just cause.

This section became effective August 4, 2008. (DA)

Feasibility of Tuition Forgiveness and Other Incentives to Increase the Number of Social Workers in Community Mental Health in Underserved Counties in North Carolina

S.L. 2008-181, Sec. 5.3 ([HB 2431](#), Sec. 5.3) authorizes the Joint Legislative Education Oversight Committee to study the feasibility of tuition forgiveness and other incentives, such as a Community Mental Health Scholars Tuition Forgiveness Program, to increase the number of social workers in community mental health in underserved counties in North Carolina. The study may include:

- Identifying policy or system barriers to the creation of a tuition forgiveness program or to hiring of graduates in underserved counties.
- Recommending a structure for a tuition forgiveness program if such a program is found feasible.
- Recommending other possible incentives to increase the number of master's level social workers providing community mental health services.

This section became effective August 4, 2008. (DA)

Impacts of Raising the Compulsory Attendance Age for Public School Attendance from 16 to 17 or 18

S.L. 2008-181, Sec. 5.4 (HB 2431, Sec. 5.4) authorizes the Joint Legislative Education Oversight Committee (Committee), in coordination with the Department of Public Instruction, to study the impacts of raising the compulsory public school attendance age from 16 to 17 or 18. The Committee must consider all of the following:

- Impacts that raising the compulsory school attendance age has had in states that have raised the age in the last 15 years.
- Conclusions that can be drawn as to the impact the compulsory school attendance age has made in the dropout and high school completion rates for states which require compulsory school attendance to ages 16, 17, and 18, respectively.
- Best practices for working with at-risk students who remain in school that have been employed in states that have raised the compulsory attendance age in the last 15 years.
- The fiscal impact of raising the compulsory school attendance age from 16 to 17 and 16 to 18, respectively, for each local school administrative unit in North Carolina.

This section became effective August 4, 2008. (DA)

Study the Role that Regional Education Service Centers that are Created within the Department of Public Instruction Could Play in the Delivery of Professional Development throughout the State

S.L. 2008-181, Part XXXIII (HB 2431, Part XXXIII) directs the Joint Legislative Education Oversight Committee to contract with a credible independent source, individual, or organization to study the roles that regional education service centers created within the Department of Public Instruction could play in the delivery of professional development throughout the State. The contractor must not be an employee or independent contractor of any organization that delivers professional development to teachers in North Carolina. The study by the contractor must include an examination of regional education service center models in other states along with data on the effectiveness of these models. Also, the contractor must seek input from various stakeholders throughout the State.

The contractor must submit written progress reports, a draft report, and a final report to the Joint Legislative Education Oversight Committee.

This part became effective August 4, 2008. (SI)

Extend Review of Public School Funding Formulas

S.L. 2008-181, Part XXXVII (HB 2431, Part XXXVII) provides that the Joint Legislative Study Committee on Public School Funding Formulas (Committee) may review the implementation of any modifications to school funding formulas enacted by the General Assembly on the Committee's recommendation and evaluate the impact of those modifications. The Committee may report annually to the General Assembly on its activities and will terminate upon completion of its evaluation of modifications to the public school funding formulas.

This part became effective August 4, 2008. (KM)

Referrals to Departments, Agencies, Etc.

Study of Students with Disabilities

S.L. 2008-107, Sec. 7.12 (HB 2436, Sec. 7.12) requires the Department of Public Instruction (DPI) to analyze the participation of students with disabilities in Learn and Earn Early College High Schools, Redesigned High Schools, the North Carolina Virtual Public School, and North Carolina public high schools on block schedules. The study must consider enrollment, graduation, and dropout rates for students with disabilities in the different programs. DPI must report its findings and any recommendations by March 15, 2009, to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Dropout Prevention and High School Graduation.

This section became effective July 1, 2008. (KM)

Providing Qualified Immunity to Health Professionals for the Disclosure of Confidential Information

S.L. 2008-181, Part XXI (HB 2431, Part XXI) directs the Board of Governors of The University of North Carolina (BOG), in conjunction with the State Board of Community Colleges, the State Board of Education, and the North Carolina Independent Colleges and Universities, to study issues related to providing qualified immunity to mental health and health professionals who disclose confidential information when the disclosure is meant to prevent or mitigate harm to others. The BOG must seek the input of the licensing bodies of mental health and health professionals when developing recommendations.

The BOG must submit a final report, including any legislative recommendations, to the Joint Select Committee on Governmental Immunity by December 1, 2008.

This part became effective August 4, 2008. (SK)

Accessibility of The University of North Carolina Facilities to Severely Physically Disabled Individuals

S.L. 2008-181, Part XXII (HB 2431, Part XXII) directs the Board of Governors of The University of North Carolina (BOG) to study the accessibility of its facilities to severely physically disabled persons seeking basic access to The University of North Carolina constituent institutions. The study may examine:

- The specific educational assistance available to physically disabled persons that the State has funded and that the State currently funds.
- The role of the Division of Vocational Rehabilitation, at the Department of Health and Human Services, in providing educational assistance that was or is currently available to physically disabled persons.
- Whether the Division of Vocational Rehabilitation could provide for personal care of severely physically disabled students at one or more constituent institutions.
- The desirability, feasibility, and estimated cost of making the facilities of one constituent institution accessible to severely physically disabled students, and the estimated cost of providing personal care.
- Whether the program in Illinois to support its physically disabled population at its state universities offers any guidance.

The BOG must report the results of the study, including recommendations and proposed legislation, to the Fiscal Research Division and the Joint Legislative Education Oversight Committee by February 1, 2009.

This part became effective August 4, 2008. (SK)

Effectiveness of Geography Education in Middle and High Schools

S.L. 2008-181, Part XXIII (HB 2431, Part XXIII) directs the Department of Public Instruction to study the effectiveness of geography education in middle schools and high schools, including any potential changes. The Department of Public Instruction must report the results of the study to the Joint Legislative Education Oversight Committee by January 15, 2009.

This part became effective August 4, 2008. (SK)

Framework for a State Certification Process for Principals and Assistant Principals

S.L. 2008-181, Part XXIV (HB 2431, Part XXIV) directs the State Board of Education (State Board), in cooperation with the Board of Governors of The University of North Carolina, to develop a framework for a North Carolina Board Certified Principal and Assistant Principal Program. The purpose of the program is to strengthen leadership skills, to aid in attracting and retaining highly qualified school leaders, and to promote student achievement in public schools. The State Board must ensure that the framework aligns professional development with standards for school executives, supports principal and assistant principal development as 21st Century leaders, models the program after the National Board for Professional Teaching Standards, recommends strategies to attract and retain principals and assistant principals, and provides supplementary salary incentives for successful participants. The State Board must develop a process to evaluate the program's effectiveness. The State Board must deliver a draft proposal to the Joint Legislative Education Oversight Committee by December 1, 2008, and report on the cost of implementing the program for the 2009-2010 fiscal year.

This part became effective August 4, 2008. (SK)

K-12 Physical Education in the Public Schools

S.L. 2008-181, Part XXV (HB 2431, Part XXV) directs the State Board of Education (State Board) to study the current status of K-12 physical education in the State. Each local school administrative unit must collect baseline data at the individual school level and report the data to the Department of Public Instruction.

At a minimum, the baseline data must include:

- Minutes in physical education on a weekly basis and number of physical education classes per week throughout the school year for every school.
- Average physical education class size for every school.
- Student Body Mass Index for a statistically valid random sample from all counties of students of varying ages.
- Nutrition and physical activity knowledge and behaviors of students in the random samples.

The State Board must report the findings of its study to the Joint Legislative Education Oversight Committee by December 1, 2008.

This part became effective August 4, 2008. (SK)

Chapter 10

Environment and Natural Resources

George Givens (GG), Jeff Hudson (JH), Mariah Matheson (MM),
Jennifer McGinnis (JLM), Jennifer Mundt (JM)

Enacted Legislation

Climate Change

Extend Climate Change Commission 2008

S.L. 2008-81 (HB 2529) (i) extends the life of the Legislative Commission on Global Climate Change from April 15, 2008, to October 1, 2009; (ii) provides that the Commission may submit interim reports at its discretion; and (iii) provides for the submission of a final report, including findings and recommendations to the 2009 General Assembly and the Environmental Review Commission on or before October 1, 2009, at which time the Commission will terminate.

This act became effective July 11, 2008. (JM)

Fisheries

Sale of Blocks of Ten-Day Coastal Recreational Fishing Licenses

S.L. 2008-141 (SB 1340) allows the resident owner of a vessel that is 23 feet or more in length that is documented with the United States Coast Guard or registered with the Wildlife Resources Commission to purchase a block of 10 Ten-Day Coastal Recreational Fishing Licenses (CRFLs). An individual Ten-Day CRFL issued as part of a block of 10 Ten-Day CRFLs may be used only on the vessel for which it was issued and may not be used on a for-hire boat.

The fee for a block of 10 Ten-Day CRFLs is \$150. An individual Ten-Day CRFL is valid for a period of 10 consecutive days beginning on the date that the license information is recorded on the license.

Prior to any recreational fishing occurring under the authority of an individual Ten-Day CRFL, the vessel owner who purchased the block of 10 Ten-Day CRFLs must record the date fishing activity will begin and the name, address, telephone number, and date of birth of the individual who will be fishing under the individual Ten-Day CRFL.

A vessel owner who fails to comply with any of the requirements governing the issuance, use, recording, or reporting of blocks of 10 Ten-Day CRFLs will be ineligible to purchase any additional blocks of 10 Ten-Day CRFLs for a period of two years from the date of noncompliance.

This act becomes effective January 1, 2009. (JH)

Miscellaneous

Amend Environmental Laws/Environmental Technical Corrections 2008

S.L. 2008-198 (SB 845) amends and makes technical corrections to various environmental and natural resource laws as follows:

- Provides that newly-constructed private drinking water wells regulated under the Well Construction Act must be tested for the following additional parameters: methyl tert-butyl ether, ethylene dibromide, 1,2-dichloroethane, 1,2-dichloropropane, isopropyl ether, benzene, toluene, ethylbenzene, xylenes, trichloroethylene, and tetrachloroethylene. This provision becomes effective October 1, 2009.
- Clarifies the Board of Agriculture's statutory authority to adopt rules on the euthanasia of animals pursuant to the Animal Welfare Act. This provision became effective retroactively to November 1, 2007.
- Renames the Blue Crab Research Program, administered by the North Carolina Sea Grant Program, the Blue Crab and Shellfish Research Program and provides that funds appropriated to the Program may be used for research on blue crabs, oysters, scallops, clams, and other shellfish.
- Provides that the Department of Transportation or any other unit of government that possesses oyster shells must make those shells available to the Division of Marine Fisheries in the Department of Environment and Natural Resources without remuneration for use in any oyster bed revitalization program or other program that may use the shells.
- Provides for a temporary limitation on additional rulemaking by the Environmental Management Commission (EMC) on rules governing the management of stormwater runoff in the coastal counties to protect Class SA (Shellfish) and Class ORW (Outstanding Resource Waters) until October 1, 2011. The limitation on rulemaking would provide for: (i) sufficient time for accumulation and evaluation of data as to the effect of the implementation of S.L. 2008-211 (SB 1967 - Improve Coastal Stormwater Management); (ii) time for additional scientific study; (iii) the development of improvements to provisions of S.L. 2008-211; and (iv) a period of predictability for persons who may be affected by the provisions of S.L. 2008-211. Prior to commencing rulemaking, the EMC must submit a report to the Environmental Review Commission that details the effect of the implementation of S.L. 2008-211 on coastal water quality. Additional rules that the EMC may adopt governing the management of stormwater runoff in the coastal counties to protect Class SA and Class ORW must not become effective until October 1, 2013. If the EMC adopts temporary or permanent rules other than to protect Class SA and Class ORW governing the management of stormwater runoff in the coastal counties, the provisions of those rules must not become applicable in the coastal counties prior to October 1, 2011, except as may be specifically required by federal law.
- Amends the recordation requirements for restrictions and protective covenants for stormwater permits under the coastal stormwater and Phase II stormwater permitting programs. This provision becomes effective October 1, 2008.
- Amends two sections of the Leaking Petroleum Underground Storage Tank Program to provide that the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund may be used to reimburse the owner or operator of a tank for annual fees that were paid under protest to the extent that the Department of Environment and Natural Resources has recovered the fees from the previous owner from whom the fees were initially due. A new owner or operator who pays unpaid annual operating fees that were the obligation of a previous owner may request

reimbursement. The Department must diligently seek to collect unpaid annual operating fees from the person who was the owner or operator of the tank at the time the fee became due.

- Requires that in areas of the State that are not already subject to the stormwater management requirements of 11 water quality programs, no more than 80% of certain areas used for vehicular parking be impervious, or in the alternative, that stormwater runoff from at least 20% of the impervious surface of the vehicle parking area flow into a bioretention area. This new stormwater provision becomes effective April 1, 2009. This provision also repeals provisions of the 2007 Appropriations Act concerning the impervious pavement requirements for vehicle parking areas.
- Declares the intent of the General Assembly that the Department of Environment and Natural Resources aggressively compel persons who are responsible for contamination of groundwater that results in contamination of drinking water to assess and remediate the groundwater contamination as required by law.
- Consolidates the individual annual reporting requirements for the Department of Environment and Natural Resources' one-stop environmental permit and the express permit and certification review program into one report.
- Amends the baseline year for comparing and reducing energy consumption, from the 2003-2004 fiscal year to the 2002-2003 fiscal year, for each State agency and State institution of higher learning pursuant to statute and in conformance with the State Energy Office's Utility Savings Initiative.
- This provision, as amended by S.L. 2008-125 (HB 821), redesignates the 8-digit cataloging units that correspond to areas located in whole or in part of North Carolina or another state. This provides that notice of a proposed interbasin transfer of water must be given to certain entities in North Carolina and other states that are located in whole or in part of the areas denoted by one of the 8-digit cataloging units.

Except as specifically noted above, this act became effective August 8, 2008. (JM)

Gasoline and Fuel Alcohol Blending

S.L. 2008-222 (SB 1339). See **Commercial Law and Consumer Protection**.

Parks and Public Spaces

State Nature and Historic Preserve Removal

S.L. 2008-11 (SB 1862) removes a portion of Lake Waccamaw State Park from the State Nature and Historic Preserve and the State Parks System in order to allow the Department of Transportation to replace and realign two bridges.

This act became effective June 25, 2008. (JLM)

State Parks System Additions

S.L. 2008-155 (HB 2496) authorizes the Department of Environment and Natural Resources to add Bear Paw State Natural Area and Yellow Mountain State Natural Area to the State Parks System.

This act became effective August 3, 2008. (JLM)

Renewable/Alternative Energy and Energy Efficiency Sales Tax Holiday for Certain Energy Star Rated Appliances

S.L. 2008-107, Sec. 28.12 (HB 2436, Sec. 28.12). See **Finance**.

Codify Energy Efficiency in Public Buildings

S.L. 2008-203 (SB 1946). See **State Government**.

Solid/Hazardous Waste

Inactive Hazardous Waste Sites Report Requirement

S.L. 2008-107, Secs. 12.1A(a) and (b) (HB 2436, Secs. 12.1A(a) and (b)) require the Department of Environment and Natural Resources to report to each member of the General Assembly who has an inactive hazardous substance or waste disposal site in the member's district. The report must contain the location of each inactive hazardous substance or waste disposal site in the member's district, the type and amount of hazardous substances or waste known or believed to be located on each of these sites, the last action taken at these sites, and the date of that last action. The initial report to each member required by these sections must be made no later than January 1, 2009.

These sections became effective July 1, 2008. (JM)

Changes to Asbestos Containing Material Removal Permit Fees for Demolition Projects

S.L. 2008-107, Secs. 29.6(a) and (b) (HB 2436, Secs. 29.6(a) and (b)) amend the Asbestos Hazard Management statutes so that an applicant for an asbestos-containing material removal permit is subject to a fee, made payable to the Department of Health and Human Services (DHHS), that must be used to offset the cost of the asbestos hazard management program. This fee replaces the permit application fee. Permit applicants must indicate whether the asbestos is to be removed as part of a renovation or demolition. If the asbestos is to be removed as a part of a renovation, the fee is the amount set by DHHS and may not exceed 1% of the contracted price, or 20¢ per square foot or linear foot of asbestos-containing material to be removed, whichever is greater. If the asbestos is to be removed as a part of a demolition, the fee is the greater of the following, not to exceed \$1,500:

- 1% of the contracted price.
- An amount set by DHHS not to exceed 20¢ per square foot or linear foot of asbestos-containing material to be removed.

These sections became effective July 20, 2008. (JM)

Cleanup of Abandoned Manufactured Homes

S.L. 2008-136 (HB 1134) creates a new Part in the General Statutes to govern the management of abandoned manufactured homes. An "abandoned manufactured home" is one that is both (i) vacant or in need of extensive repair and (ii) an unreasonable danger to public health, safety, welfare, or the environment. The act does all of the following:

- Directs each county to consider whether to implement a program to manage these homes. The decision to implement a program is, however, voluntary.

- For counties that opt to implement a program, the act:
 - Provides that the county must include a written plan as a component of its solid waste management plan required under the General Statutes. Plans must include methods for identification of abandoned homes and plans for deconstruction, removal, and proper disposal.
 - Establishes a process for disposal of these homes by counties. The county must give written notice to the responsible party (any person that possesses an ownership interest in the home) and the owner of the land on which the home is located that (i) the responsible party must properly dispose of the home within 90 days and (ii) a hearing on the matter will be held before a designated public officer. If, after notice and a hearing, the hearing officer determines that the home is abandoned the county must order the responsible party to dispose of the home within 90 days. If the responsible party does not comply with the order, the county is authorized to take action to deconstruct and dispose of the home properly. The responsible party then would be liable for the costs incurred by the county to deconstruct and dispose of the home. The county is authorized to initiate a civil action to recover the unpaid costs from the responsible party. Nonpayment of any portion of the actual costs incurred by the county may result in the imposition of a lien on any real property in the county owned by the responsible party.
 - Directs the Department of Environment and Natural Resources to use funds from the Solid Waste Trust Fund to provide grants to counties to reimburse their expenses incurred to deconstruct and dispose of abandoned manufactured homes. Reimbursement is generally limited to \$1,000 per unit.
- Prohibits disposal of an intact abandoned manufactured home in a landfill.
- Directs up to \$1 million from the Solid Waste Trust Fund to be used in order to provide grants to counties for the cleanup of abandoned manufactured homes (see information on grants above).

This act becomes effective July 1, 2009 and expires October 1, 2023. (JLM)

Solid Waste Tax Changes/Unsalable Other Tobacco Products Refund

S.L. 2008-207 ([HB 2530](#)). See **Finance**.

Electronics Recycling Amendments/Add Televisions

S.L. 2008-208 ([HB 819](#)) makes the following changes to the statutes that govern the management of discarded electronic waste:

- Delays the effective date of the provisions enacted concerning discarded computer equipment to January 1, 2010. These provisions originally were enacted in 2007 (see S.L. 2007-550) and under that legislation were scheduled to become effective January 1, 2009.
- Adds televisions to the equipment that must be recycled. Under the act, each television manufacturer must do all of the following:
 - Annually recycle the manufacturer's market share allocation of televisions.
 - Register with the Department of Environment and Natural Resources (Department).
 - Pay a \$2,500 initial registration fee and a \$2,500 annual renewal registration fee. The proceeds of the fees will be credited to the Television Management Account.

- Document due diligence assessments of recyclers that the manufacturer contracts with, including an assessment of compliance with environmentally sound recovery standards adopted by the Department.
- Submit a report to the Department by October 1 of each year on the total weight of televisions collected and recycled by the manufacturer during the previous year.
- With regard to televisions, the act prohibits all of the following:
 - Sale of a new television by a manufacturer, or delivery to a retailer for sale, unless the television is labeled properly and the manufacturer has registered with the Department. In addition, a retailer that sells new televisions must review the Department's website in order to determine that the manufacturer is registered as required. A retailer is not responsible, however, for an unlawful sale if the manufacturer's registration expired or was revoked after the retailer took possession of the television.
 - The disposal of discarded televisions in landfills or by incineration effective January 1, 2011.
 - The sale of televisions to the State and to political subdivisions of the State by manufacturers not in compliance with requirements of the act effective January 1, 2011.

This act becomes effective January 1, 2010 unless otherwise indicated. (JLM)

Underground Storage Tanks

Underground Storage Tank Program Amendments

S.L. 2008-195 (HB 2498) makes the following changes to the statutes that govern cleanups from leaking petroleum underground storage tanks (USTs):

- Increases the annual operating fee for a UST to \$420. Under current law the fee for a tank of 3,500 gallons or less is \$200, and for a tank of 3,500 gallons or more is \$300. This provision becomes effective January 1, 2009.
- Establishes certain time limitations associated with reimbursement of costs from UST cleanups. This provision becomes effective January 1, 2009.
- Requires secondary containment for all components of regulated petroleum UST systems. This provision became effective August 8, 2008.
- Provides that the Department of Environment and Natural Resources (DENR) must issue an operating permit only if an owner or operator of a UST has demonstrated the required financial responsibility. This provision becomes effective January 1, 2009.
- Directs DENR to establish a pilot program to evaluate the use of site-specific cleanup standards for the cleanup of discharges or releases from USTs as opposed to the risk-based assessment and corrective action standards set forth in the administrative code in order to determine whether site-specific standards provide effective protection of public health, safety, and the environment at a lower overall cost. Participation in the pilot program is voluntary but is limited to discharges or releases classified as intermediate risk. This provision became effective August 8, 2008, and expires September 1, 2014.
- Provides that an owner or operator may request reclassification of a discharge or release at a site to a lower-risk classification. This provision became effective August 8, 2008, and expires September 1, 2014.
- Extends the Pay for Performance Program, originally enacted in 2001, until October 1, 2011. This provision is effective retroactively to October 1, 2006.

- Directs DENR to use up to \$3 million annually of receipts from the increase in tank fees under the act solely for the removal of free petroleum from groundwater and the balance of the increase of fees to address other concerns raised in a September 19, 2006, letter from the United States Environmental Protection Agency to the Secretary of Environment and Natural Resources. This provision becomes effective January 1, 2009.

This act became effective as noted above. (JLM)

Water Quality/Quantity/Groundwater

Bernard Allen Memorial Emergency Drinking Water Fund Amendments

S.L. 2008-107, Sec. 12.1 (HB 2436, Sec. 12.1) makes the following clarifying and substantive amendments to various provisions of the Bernard Allen Memorial Emergency Drinking Water Fund (Fund):

- Clarifies that the Fund may be used to provide alternative drinking water supplies if the Department of Environment and Natural Resources (Department) determines that the concentration of one or more contaminants in the private drinking water well or improved spring exceeds the federal maximum contaminant level or the drinking water action level as defined in the Code of Federal Regulations.
 - For contaminants for which a maximum contaminant level or drinking water action level have not been established, the State groundwater standard established by Environmental Management Commission for the concentration of that contaminant must be used to determine whether the Fund may be used to provide alternative drinking water supplies.
 - The Fund may be used to provide alternative drinking water supplies if the Department determines that the concentration of one or more contaminants in a private drinking water well is increasing over time and that there is a significant risk that the contaminant level will exceed the federal maximum contaminant level or the drinking water action level or the State groundwater standard. This determination must be made based on a sample of water collected from the well within the past 12 months.
- Clarifies that in its provision of alternative drinking water supplies, the Department must give preference to a public water supply system or to the construction of a new private drinking water well over the use of a filtration system if the Department determines that the costs of maintaining a filtration system would be prohibitive.
- Provides that if the Department provides an alternative drinking water supply by extension of a waterline, the Department may disperse no more than \$10,000 from the Fund per household or other service connection and that no more than 1/3 of the total cost of the project may be paid from the Fund.
- Clarifies that the Fund must be used to provide alternative drinking water supplies only if the Department determines that the person or persons who are responsible for the contamination of the private drinking water well is or are not financially viable or cannot be identified and if the Department determines that one of the following applies:
 - The contamination of the well is naturally occurring.
 - The owner of the property on which the well is located did not cause or contribute to the contamination or control the source of the contamination.
 - The source of the contamination is the disposal of a hazardous substance or pesticide that occurred without the consent of the owner of the property on which the well is located.

- Provides that the Department may use up to \$100,000 of the monies in the Fund to pay personnel and other direct costs associated with the implementation of the Fund.

This section became effective July 1, 2008. (JM)

Establish North Carolina Conservation Easement and Endowment Fund

S.L. 2008-107, Secs. 12.9(a), (b), and (c) (HB 2436, Secs. 12.9(a), (b), and (c)) establish the North Carolina Conservation Easement Endowment Fund as a special fund in the Office of the State Treasurer. The principal of the Endowment Fund will consist of a portion of grant funds transferred from the Clean Water Management Trust Fund and may consist of any proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund. No expenditure or disbursement may be made from the principal of the Endowment Fund, which principal must be invested by the State Treasurer. The income from the investment of the principal, however, may be used for activities related to stewardship of conservation easements owned by the State.

This act became effective July 1, 2008. (JLM)

Stormwater Runoff from Bridges

S.L. 2008-107, Sec. 25.18 (HB 2436, Sec. 25.18). See **Transportation**.

Specify Out-of-State Areas for Interbasin Transfer Notice

S.L. 2008-125 (HB 821), as amended by S.L. 2008-198, Sec. 11.5 (SB 845, Sec. 11.5), provides additional specification as to the cities and counties in states outside North Carolina in which notices related to a proposed interbasin transfer of water must be given. Specifically, the act provides that notice must be given to entities in another state that are located in whole or in part of the surface drainage basin area of the source river that also falls within, in whole or in part, the area denoted by 1 of 44 eight-digit cataloging units, as organized by the United States Geologic Survey.

This act also requires the Environmental Review Commission, as part of its study of the allocation of water resources in this State, to study the delineation of major river basins and sub-basins within the State. The Commission also must determine whether the definition of river basin, as set out in the General Statutes and the accompanying map, should be revised. The Commission may submit interim reports to the 2009 Regular Session of the General Assembly and must submit a final report of its findings and recommendations, including any legislative proposals on or before October 1, 2010.

This act became effective July 28, 2008. (JM)

Yadkin Project Study

S.L. 2008-137 (SB 1046) directs the Environmental Review Commission to study the impacts on the State of the potential issuance of a new 50-year license by the Federal Energy Regulatory Commission (FERC) to Alcoa Power Generating, Inc. (APGI). The Commission is authorized to consider and develop proposals for the following issues:

- The socioeconomic impacts of APGI's decision to discontinue its job-producing manufacturing activities at its Badin facility that relied on the use of low-cost power from the Yadkin Hydroelectric Project.
- Assurance of an adequate, clean future water supply for the region.

- The allocation of water for non-power uses from the Yadkin Hydroelectric Project.

The Commission must submit a report to the 2009 General Assembly no later than February 1, 2009. The report must include findings and any recommendations, including legislative proposals that would assist in implementing the recommendations.

This act does not preclude the Governor or any State agency or department from taking any action necessary to protect the interest of the State in the re-licensing procedure for the Yadkin Hydroelectric Project.

This act requires the Department of Environment and Natural Resources (Department), to the extent allowed by State and federal statutes and rules, and without delaying its decision, to consider the report submitted by the Commission in making any decision on an application for water quality certification requested by APGI. The report submitted by the Commission must be included in the information necessary to trigger the 60-day time limit for final action on certification application for a decision by the Director of the Division of Water Quality in the Department and must be supplied promptly to the Director upon receipt by the General Assembly. Nothing in this act affects the authority of the Department to provide notices, request additional studies or information, conduct hearings, or issue or deny a 401 Water Quality Certification for the FERC re-licensing project.

This act became effective July 28, 2008. (JM)

Public Water Service Warranties

S.L. 2008-140 ([SB 1259](#)) provides that water supplied by a public water system regulated under the North Carolina Drinking Water Act is not subject to any warranty in Article 2 of the Uniform Commercial Code, including an implied warranty of merchantability or an implied warranty of fitness for a particular purpose.

This act became effective July 28, 2008. (JM)

Drought/Water Management Recommendations

S.L. 2008-143 ([HB 2499](#)) makes various changes to State law on drought preparedness and response and water management as follows:

Section 1. Registration of Water Withdrawals and Transfers.

Under current law, any person who withdraws or transfers 100,000 gallons per day or more of water must register with the Environmental Management Commission (EMC). This requirement does not apply to a person who withdraws or transfers less than 1 million gallons per day of water for agricultural activities. Section 1:

- Provides that the requirement to register a withdrawal or transfer of water does not apply to a withdrawal or transfer of less than 1 million gallons per day to create or maintain a waterfowl impoundment.
- Provides that (i) registration of a withdrawal or transfer of water or (ii) participation in the annual agricultural water use survey with consent to release individual information may be used as evidence of historic water use if it becomes necessary to allocate available water resources.
- Increases the civil penalties for failure to register water withdrawals and transfers and provides that continuing failure to register may be treated as separate violations and a separate penalty may be assessed for each separate violation.

Section 2. Collection of Agricultural Water-Use Information.

Under current law, the Department of Agriculture and Consumer Services collects and publishes statistical information relating to agriculture. The Department is specifically authorized to collect information through sample surveys. Section 2 directs the Department to collect by survey annually information on water use by a person who withdraws 10,000 gallons of water per day or more for agricultural activities.

Section 3. Definitions.

Important definitions in the act include:

- **"Essential water use"** means the use of water necessary for firefighting, health, and safety; water needed to sustain human and animal life; water necessary to satisfy federal, State, and local laws for the protection of public health, safety, the environment, and natural resources; and a minimum amount of water necessary to maintain the economy of the State, region, or area.
- **"Water shortage emergency"** means a water shortage resulting from prolonged drought, contamination of the water supply, damage to water infrastructure, or other unforeseen causes that presents an imminent threat to public health, safety, and welfare or to the environment.

Section 4. Conforming Changes.

Amends the powers and duties of the EMC to conform to changes made in Section 8 of the act.

Section 5. Water Conservation Measures.

Requires each unit of local government that provides public water service and each large community water system to develop and implement water conservation measures to respond to drought or other water shortage conditions. These measures will be set out in a water shortage response plan, which will be submitted to the Department of Environment and Natural Resources (DENR) for review and approval. DENR will approve the water shortage response plan if the plan meets all of the following criteria:

- The plan includes tiered levels of water conservation measures or other response actions based on the severity of water shortage conditions.
- Each tier of water conservation measures is based on increased severity of drought or water shortage conditions and will result in more stringent water conservation measures.
- All other requirements of rules adopted by the EMC.
- Does not contain any provision that meters or regulates private drinking water wells.

Provides that DENR may require a water system to implement more stringent water conservation measures than those required by the water shortage response plan if DENR makes certain written findings. If a water system does not have a water shortage response plan, it must implement the default water conservation measures for extreme and exceptional drought set out in the rules adopted by the EMC.

Section 6. Study Issues Related to Increasing Water Supply.

Directs the Environmental Review Commission, as part of its ongoing study of the allocation of water resources in the State, to study issues related to increasing water supply, including issues related to reservoir construction. The ERC will report its findings and recommendations, including any legislative proposals, to the General Assembly.

Section 7. Collection of Water Use Information from Water Systems.

Provides that in the event of extreme or exceptional drought or other water shortage, DENR may require water systems in the affected area to report the amount of water used, withdrawn, diverted, or obtained on a weekly basis and may require the reporting of additional information necessary to assess and manage the drought or water shortage.

Section 8. Water Shortage Emergency Powers.

Provides that if, after consultation with the affected water system and the unit of local government with jurisdiction over the area served by the water system, the Secretary of Environment and Natural Resources (Secretary) determines that the needs of human consumption, necessary sanitation, and public safety require emergency action, the Secretary will provide the Governor with written findings setting out the basis for declaration of a water shortage emergency. The Governor will have the authority to declare a water shortage emergency in the area. The emergency period may not exceed 30 days, but the Governor may declare successive emergencies based upon the written findings of the Secretary.

Provides that when the Governor declares the existence of a water shortage emergency, the Secretary will have the power and duty to:

- Require any water system that has water supply in excess of that required to meet the essential water uses of its customers to provide water to a water system experiencing a water shortage emergency.
- Adopt rules on the conservation and use of water within the water shortage emergency area necessary to maintain essential water use within the water shortage emergency area.
- Adopt rules on the conservation and use of water within the service area of the water system from which water is being diverted necessary to maintain essential water uses in the system while supplying water to the water shortage emergency area.

Provides that a water system that is affected by a water shortage emergency is authorized to lay necessary temporary waterlines for the period of a declared water shortage emergency without first acquiring right-of-way. For the laying of temporary waterlines, the water system must use the condemnation procedures exercised by the Department of Transportation (quick take procedures).

Provides that when the Secretary orders any diversion of water, the receiving water or wastewater system must reimburse the supplying water system for up to 110% of the cost of the water. The cost charged to the receiving system must not exceed the retail cost that would be charged to a customer of the supplying system and any additional costs incurred by the supplying system for alterations to its infrastructure or water treatment to effectuate the diversion except as provided under an interlocal agreement.

Section 9. Water System Efficiency.

Requires water systems to require separate meters for new in-ground irrigation systems that are connected to their systems.

Provides that in order to be eligible for State funding for extending waterlines or expanding water treatment capacity, a water system must demonstrate that it:

- Has established a water rate structure that is adequate to pay for the costs of the system during periods of normal use and periods of reduced water use due to implementation of water conservation measures.
- Has implemented a leak detection and repair program.
- Has an approved water supply plan.
- Meters all water use except for water use that is impractical to meter.
- Does not use a rate structure that gives residential water customers a lower per unit water rate as water use increases.
- Has evaluated the extent to which the future water needs of the water system can be met by reclaimed water.
- Has implemented a consumer education program that emphasizes the importance of water conservation.

Section 10. Water Reuse.

Provides that it is State policy that the reuse of treated wastewater or reclaimed water is a critical component of meeting the existing and future water supply needs of the State. The act directs the EMC to adopt rules to encourage and promote safe and beneficial reuse of treated wastewater.

Section 11. Enforcement.

Authorizes the Secretary to assess a civil penalty of between \$100 and \$500 against any person who:

- Fails to report water use information under certain circumstances.
- Fails to act in accordance with the terms, conditions, or requirements of an order issued by the Secretary during a water shortage emergency.
- Violates any provision of the water resource statutes or any rule that implements the water resource statutes.

Provides that:

- A continuing violation may be treated as separate violations and a separate penalty may be assessed for each separate violation.
- A civil penalty of not more than \$10,000 per month may be assessed against a water system that fails to implement required water conservation measures.
- The violation of emergency water conservation rules is a Class 1 misdemeanor.

Section 12. Electronic Submission of Reports.

Requires water system plans to be submitted electronically.

Sections 13 and 14. Use of Gray Water.

Defines "gray water" as wastewater removed from household wash basins, bathtubs, and showers.

Directs the Commission for Health Services to adopt rules to authorize the use of gray water during periods of drought to hand water trees, shrubs, and inedible plants on single family residential property.

Provides that until the Commission for Health Services adopts gray water rules, untreated gray water may be used in periods of drought to hand water trees, shrubs, and inedible plants on single family residential property under certain conditions.

Section 15. Priority for Wastewater Reserve or Drinking Water Reserve Funds.

Amends the criteria for funding from the Wastewater Reserve and the Drinking Water Reserve to provide that priority be given to a project that:

- Conserves or reuses water, including bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses.
- Constructs an interconnection between water systems intended for use in drought or other water shortage emergency.
- Repairs or replaces leaking waterlines.
- Replaces meters and installs new metering systems.

Section 16. Drought Management Advisory Council.

Directs the Drought Management Advisory Council (Council) to provide information on drought conditions in the State to the United States Drought Monitor (Drought Monitor), the EMC, the Environmental Review Commission, and the public.

Provides that representatives on the Council must have expertise or responsibility in meteorology, groundwater and surface water hydrology, water system operation and management, reservoir management, emergency response, or another subject area related to assessment and management of drought impacts.

Provides that drought designations by the Drought Monitor will be the default designations for drought advisories. The Council may recommend a drought designation for a county that is different from the designation based on the Drought Monitor. In recommending a drought designation that differs from the Drought Monitor designation, the Council will consider stream flows, ground water levels, the amount of water stored in reservoirs, weather forecasts, the time of year, and other factors that are relevant to determining the location and severity of drought conditions. Provides that the Secretary will accept the Council's recommendation if the Secretary finds that the indicators of drought identified by the Council support the designation recommended by the Council.

Section 17. Development of Water Rate Structure Guidelines.

Directs the State Water Infrastructure Commission to develop guidelines for water rate structures that adequately address water system costs while considering the effect of water rates on water conservation.

Section 18. Development of Water Efficiency Standards.

Directs DENR to develop recommendations for water efficiency standards for water-using fixtures in residential and commercial building and in-ground irrigation systems.

Section 19. Certain Covenant Requirements for Irrigation Prohibited.

Prohibits the enforcement of condominium or planned community covenants that require the irrigation of landscaping while an area is under a severe, extreme, or exceptional drought.

Section 20. Leave Law on Regulation of Private Wells Unchanged.

Provides that nothing in the act will expand or limit the authority of a water system to regulate water use from a well located outside its jurisdiction, a well not connected to it, or any other private well.

Section 21. Effective Dates.

Sections 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, and 20 became effective July 31, 2008. Water Shortage Response Plans revised to comply with G.S. 143 354.1, as enacted by Section 5 must be submitted no later than July 1, 2009. Subsection (c) of Section 14 expires when rules adopted pursuant to subsection (b) of Section 14 become effective. Sections 1, 2, and 19 become effective October 1, 2008. Section 11 becomes effective December 1, 2008, and applies to offenses committed on or after that date. Section 9 becomes effective July 1, 2009. (JH)

Promote Private Compensatory Mitigation

S.L. 2008-152 ([SB 1885](#)) provides that under certain circumstances, applicants for compensatory wetlands mitigation, other than the North Carolina Department of Transportation, must seek the compensatory wetlands mitigation from a private wetlands mitigation bank before seeking in lieu fee mitigation from the Environmental Enhancement Program. Specifically, an applicant first must seek compensatory wetlands mitigation from a mitigation bank if there is at least one available mitigation bank that:

- Has been approved by the United States Army Corps of Engineers.
- Has been approved by the Division of Water Quality in the Department of Environment and Natural Resources.
- Has available mitigation credit.

If there is no mitigation bank that meets these requirements, the applicant may seek fee mitigation from the Ecosystem Enhancement Program. The applicant always has the option to implement its own wetlands restoration plan or to donate land to a public entity or conservation organization approved by the Department of Environment and Natural Resources.

This act becomes effective October 1, 2008, and applies to applications for a mitigation permit submitted on or after that date. (JH)

Irrigation Contractors Licensure/Fees

S.L. 2008-177 ([HB 2353](#)). See **Occupational Boards and Licensing**.

Improve Coastal Stormwater Management

S.L. 2008-211 ([SB 1967](#)) disapproves the proposed Coastal Stormwater Management rule adopted by the Environmental Management Commission (EMC) and provides for the following to replace it:

Disapprove Rule.

Disapproves proposed 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties).

Supersede Rule.

Supersedes existing 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) and provides that all references to the existing rule will be deemed to refer to the same or similar provisions in the act. This provision becomes effective October 1, 2008.

Requirements for Certain Non-residential and Residential Development in Coastal Counties.

Provides that the following types of development activities in the Coastal Counties must manage stormwater as provided below:

- Non-residential development activities that will add more than 10,000 square feet of built-upon area or that require a Sedimentation and Erosion Control Permit or a Coastal Area Management Act (CAMA) Major Development Permit.
- Residential development activities that require a Sedimentation and Erosion Control Permit or a Coastal Area Management Act Major Development Permit

Development Near Outstanding Resource Waters. - Development located within 575 feet of Outstanding Resource Waters (ORW) will be permitted as follows:

Low Density Option. - Development will be permitted as a low density project if the development meets all of the following requirements:

- Has a built-upon area of 12% or less.
- Stormwater runoff from the development is transported primarily by vegetated conveyances.
- Stormwater runoff from built-upon areas that is directed to flow through any wetlands must flow into and through these wetlands at a non-erosive velocity.
- The development contains a 50-foot wide vegetative buffer for new development activities and a 30-foot wide vegetative buffer for redevelopment activities. The vegetative buffer may be cleared or graded but must be planted with and maintained in grass or any other vegetative or plant material. The Division of Water Quality (DWQ) in the Department of Environment and Natural Resources may, on a case by case basis, grant a minor variance from the vegetative buffer requirements.

High Density Option. - Development will be permitted as a high-density project if the development meets all of the following requirements:

- Has a built-upon area of greater than 12%.
- Has no direct outlet channels or pipes to Shellfishing (SA) waters unless permitted in accordance with the rule governing stormwater discharges.
- Stormwater runoff from built-upon areas that is directed to flow through any wetlands must flow into and through these wetlands at a non-erosive velocity.
- Utilizes certain types of stormwater control systems.
- Stormwater runoff from the development that is in excess of the design volume must flow overland through a vegetative filter.
- The development contains a 50-foot wide vegetative buffer for new development activities and a 30-foot wide vegetative buffer for redevelopment activities. The vegetative buffer may be cleared or graded but must be planted with and maintained in grass or any other vegetative or plant material. DWQ may, on a case by case basis, grant a minor variance from the vegetative buffer requirements.

Stormwater Discharges Prohibited. - Development activities must prohibit new points of stormwater discharge to SA waters and increase in the volume or capacity of stormwater flow through conveyances that drain to SA waters. The following will not be considered a direct point of stormwater discharge:

- Infiltration of the stormwater runoff from the design storm.
- Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area that is capable of providing effective infiltration of the runoff from the design storm.
- The discharge from a wet detention pond that is treated by a secondary stormwater best management practice.

Limitation on the Density of Development. - Development must be limited to a built-upon area of 25% or less.

Development Near SA Waters. - Development activities within one-half mile of and draining to SA waters or within one-half mile of and draining to unnamed freshwater tributaries to SA waters must meet the same requirements as development near ORW waters, except that development near SA waters is not limited to a built-upon area of 25% or less.

Other Coastal Development. - Development activities within the Coastal Counties except those near ORW or SA waters must meet all of the following requirements:

Low-Density Option: Development will be permitted as a low-density project if the development meets all of the following requirements:

- The development has a built-upon area of 24% or less.
- Stormwater runoff from the development is transported primarily by vegetated conveyances.
- Stormwater runoff from built-upon areas that is directed to flow through any wetlands must flow into and through these wetlands at a non-erosive velocity.
- The development contains a 50-foot wide vegetative buffer for new development activities and a 30-foot wide vegetative buffer for redevelopment activities. The vegetative buffer may be cleared or graded but must be planted with and maintained in grass or any other vegetative or plant material. DWQ may, on a case by case basis, grant a minor variance from the vegetative buffer requirements.

High-Density Option: Development will be permitted as a high-density project if the development meets all of the following requirements:

- The development has a built-upon area of greater than 24%.
- Utilizes certain types of stormwater control systems.
- Stormwater runoff from built-upon areas that is directed to flow through any wetlands must flow into and through these wetlands at a non-erosive velocity.
- Stormwater control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one-half inches of rainfall.
- The development contains a 50-foot wide vegetative buffer for new development activities and a 30-foot wide vegetative buffer for redevelopment activities. The vegetative buffer may be cleared or graded but must be planted with and maintained in grass or any other vegetative or plant material. DWQ may, on a case by case basis, grant a minor variance from the vegetative buffer requirements.

Requirements for Structural Stormwater Controls. - Structural stormwater controls used to manage stormwater under the coastal stormwater management program must meet certain performance and design criteria.

Certain Wetlands Excluded from Density Calculation. - Coastal Wetlands will not be included in the overall project area to calculate impervious surface density. Non-Coastal Wetlands may be included in the overall project area to calculate impervious surface density. These provisions become effective October 1, 2008.

Requirement for Limited Residential Development in Coastal Counties.

Provides that for residential development activities within the 20 Coastal Counties that are located within ½ mile and draining to SA waters, that have a built-upon area greater than 12%, that do not require a stormwater management permit, and that will add more than 10,000 square feet of built-upon area, a one-time, non-renewable stormwater management permit must be obtained. The permit will require recorded deed restrictions or protective covenants to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff must be managed using any one or combination of the following practices:

- Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- Install any other stormwater best management practice to control and treat the stormwater runoff from all built-upon areas of the site from the first one and one-half inches of rain.

These provisions become effective October 1, 2008.

Exclusions.

Provides that the requirements of the act do not apply to following:

- Activities of the North Carolina Department of Transportation.
- Development activities that are conducted pursuant to certain State or local authorizations.
- Redevelopment activities that do not result in increased built-upon area and that provide stormwater control equal to the previous development.
- Development activities for which a complete stormwater permit application was received by DWQ prior to the effective date of the act.
- Development activities that require a minor modification only or revision of an existing State stormwater management permit.
- A Phase 2 municipality located in a Coastal County until its Phase 2 permit expires and is subject to renewal.

These provisions become effective October 1, 2008.

Exemptions from Vegetative Buffer Requirements.

Provides that the following activities are exempt from the buffer requirements:

- Development of urban waterfronts.
- Development of upland marinas.
- Development that is exempt from CAMA requirements.

These provisions become effective October 1, 2008.

Rescinds certain Phase 2 stormwater designations from local governments in the Coastal Counties. These provisions become effective October 1, 2008.

Additional Rulemaking.

Authorizes the EMC to adopt rules to replace the disapproved or superseded rules. If the EMC does adopt rules, they must be substantively identical to the provisions of the act and will be subject automatically to review by the General Assembly and not the Rules Review Commission.

Construction of Act.

Provides:

- Except as provided in Section 4, nothing in the act alters the authority of the EMC or a local government.
- The act does not affect any delegation of power or duty to the EMC or DENR.
- Guidance for the interpretation and implementation of the phrase "common plan of development or sale."

Provisions of Act Not Codified; Set Out as Note.

Provides that the Revisor of Statutes will not codify any of the provisions of the act, but will set out the text of the act as a note to G.S. 143-214.7.

Except as otherwise provided, this act became effective August 9, 2008. (JH)

Studies

New/Independent Studies/Commissions

Legislative Commission on Urban Growth and Infrastructure Issues

S.L. 2008-181, Secs. 36.1 and 36.4(1) (HB 2431, Secs. 36.1 and 36.4(1)) establish the Legislative Study Commission on Urban Growth and Infrastructure Issues. The purpose of the Commission is to determine what measures the General Assembly may take to foster regional water resource and transportation planning, incentive-based local land use planning, and more

responsive and cost-effective planning to accommodate rapid population growth in North Carolina's urban areas.

The Commission will consist of 14 members as follows:

- 5 members appointed by the Speaker of the House of Representatives.
- 5 members appointed by the President Pro Tempore of the Senate.
- 4 members representing North Carolina's urban areas appointed jointly by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, including at least 1 member from Wake, Durham, or Orange County, 1 member from Forsyth or Guilford County, and 1 member from Mecklenburg County.

The Commission will study the following issues relating to urban growth and infrastructure:

- Options for fostering regional planning for water and transportation infrastructure.
- Strategies, including additional local land use regulatory tools, for encouraging the use of incentive-based planning by urban area local governments.
- Strategies to help urban communities maximize the benefits of growth and cope with the challenges presented by rapid growth in population, school enrollment, vehicle miles traveled on urban roads and highways, and related demands for other public services while preserving a viable economic climate and building greater regional cooperation.
- Any other matters the Commission considers necessary in furtherance of the purpose for which it is established.

The Commission may contract for professional, clerical, or consultant services. All State departments and agencies and local governments and their subdivisions must furnish the Commission with any information in their possession or available to them. The Commission will report the results of its study and its recommendations to the 2009 General Assembly upon its convening.

These sections became effective August 4, 2008. (JH)

Referrals to Existing Commissions/Committees

Extend Water Allocation Study

S.L. 2008-10 (SB 1872) extends the dates for the reporting requirements for the Water Allocation Study undertaken by the Environmental Review Commission. With the revised dates, the Commission may submit interim reports to the 2008 and 2009 regular sessions of the General Assembly and must submit a final report of its findings and recommendations, including any legislative proposals on or before October 1, 2010.

This act became effective June 25, 2008. (JM)

Specify Out-of-State Areas for Interbasin Transfer Notice

S.L. 2008-125, Sec. 2 (HB 821, Sec. 2) requires the Environmental Review Commission, as part of its study of the allocation of water resources in this State, to study the delineation of major river basins and sub-basins within the State. The Commission also must determine whether the definition of river basin, as set out in the General Statutes and the accompanying map, should be revised. The Commission may submit interim reports to the 2009 Regular Session of the General Assembly and must submit a final report of its findings and recommendations, including any legislative proposals on or before October 1, 2010.

This section became effective July 28, 2008. (JM)

Yadkin Project Study

S.L. 2008-137, Secs. 1 and 2 ([SB 1046](#), Secs. 1 and 2) direct the Environmental Review Commission to study the impacts on the State of the potential issuance of a new 50-year license by the Federal Energy Regulatory Commission (FERC) to Alcoa Power Generating, Inc. (APGI). The Commission is authorized to consider and develop proposals for the following issues:

- The socioeconomic impacts of APGI's decision to discontinue its job-producing manufacturing activities at its Badin facility that relied on the use of low-cost power from the Yadkin Hydroelectric Project.
- Assurance of an adequate, clean future water supply for the region.
- The allocation of water for non-power uses from the Yadkin Hydroelectric Project.

The Commission must submit a report to the 2009 General Assembly no later than February 1, 2009. The report must include findings and any recommendations, including legislative proposals that would assist in implementing the recommendations.

These sections became effective July 28, 2008. (JM)

Drought/Water Management Recommendations

S.L. 2008-143, Sec. 6 ([HB 2499](#), Sec. 6) directs the Environmental Review Commission, as part of its ongoing study of the allocation of water resources in the State, to study issues related to increasing water supply, including issues related to reservoir construction. The ERC will report its findings and recommendations, including any legislative proposals, to the General Assembly.

This section became effective July 31, 2008. (JH)

Costs and Benefits of the Adoption of California Motor Vehicle Emissions Standards in North Carolina

S.L. 2008-181, Sec. 6.2 ([HB 2431](#), Sec. 6.2) provides that the Environmental Review Commission, in consultation with the Division of Air Quality in the Department of Environment and Natural Resources, may study the costs and benefits of the adoption of the California motor vehicle emissions standards in this State. The Commission must determine the following in the conduct of its study:

- The projected emissions of carbon dioxide (CO₂) for each year through 2020 from motor vehicles in North Carolina if the standards are adopted in this State, as compared to emissions of CO₂ projected from the same period from motor vehicles in this State if the standards are not adopted. This comparison must factor in any projected reduction of emissions of CO₂ resulting from the implementation of federal emissions standards and federal fuel efficiency standards.
- The projected increase in costs to sellers and purchasers of new vehicles if the standards are adopted in North Carolina.
- The projected quantity and cost of fuel to North Carolina consumers if the standards are adopted in North Carolina as compared to the quantity and cost of fuel if the standards are not adopted. This comparison must determine the quantity and cost of fuel during the first five years of the useful life of the vehicle and over the projected useful life of the vehicle.

The Commission must report any findings, together with any legislative recommendations, to the 2009 Regular Session upon its convening.

This section became effective August 4, 2008. (JM)

Stormwater Permitting

S.L. 2008-181, Sec. 6.3 (HB 2431, Sec. 6.3) authorizes the Environmental Review Commission to study the feasibility of implementing a stormwater management program without requiring the issuance of a State permit prior to construction. The Commission would report its findings, together with any recommended legislation, to the 2009 Regular Session of the General Assembly upon its convening.

This section became effective August 4, 2008. (JH)

Consolidation of Environmental Regulatory Programs

S.L. 2008-181, Sec. 6.4 (HB 2431, Sec. 6.4) authorizes the Environmental Review Commission to study the desirability of abolishing existing environmental regulatory programs and replacing them with a new, full-time Environmental Management Commission modeled on the Utilities Commission in order to improve efficiency, communication, and coordination within State government in the development and implementation of environmental and natural resources policy. The Commission may report its findings, together with any recommended legislation, to the 2009 Regular Session of the General Assembly upon its convening.

This section became effective August 4, 2008. (JH)

Wind Permitting

S.L. 2008-181, Sec. 6.5 (HB 2431, Sec. 6.5) authorizes the Environmental Review Commission to study methods for implementing a State-level permitting system and siting requirements for commercial-scale wind energy systems that will ensure that wind energy systems are sited in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources. The Commission may report its findings, together with any recommended legislation, to the 2009 Regular Session of the General Assembly upon its convening.

This section became effective August 4, 2008. (JH)

Hazard Disclosures in Coastal Real Estate Transactions

S.L. 2008-181, Sec. 6.6 (HB 2431, Sec. 6.6) authorizes the Environmental Review Commission to study issues related to disclosure of coastal hazards (such as conditions and rules affecting potential development or redevelopment of the property, including, but not limited to, annual erosion rates, setback requirements, 100-year storm recession estimates, high hazard flood areas, inlet hazard areas, flood elevation levels, variances, and other relevant data) to prospective purchasers in coastal real estate transactions.

This section became effective August 4, 2008. (JLM)

Date Certain for Phase-Out of Hog Lagoons

S.L. 2008-181, Sec. 6.7 (HB 2431, Sec. 6.7) authorizes the Environmental Review Commission to study the establishment of a date certain for the phase-out of hog lagoons. The Commission may report its findings, together with any recommended legislation, to the 2009 Regular Session of the General Assembly upon its convening.

This section became effective August 4, 2008. (JH)

Protection of Conservation Land from Eminent Domain

S.L. 2008-181, Sec. 6.8 (HB 2431, Sec. 6.8) authorizes the Environmental Review Commission to study whether there should be a limitation on the authority to exercise the power of eminent domain to condemn land protected through a conservation easement.

This section became effective August 4, 2008. (JLM)

Recycle Plastic Bags/Alternatives to Plastic Bags

S.L. 2008-181, Sec. 6.9 (HB 2431, Sec. 6.9) authorizes the Environmental Review Commission to study issues related to the use of plastic bags, which may include impacts on the environment and possible legislative action such as mandatory recycling programs, landfill bans, and taxes on use of these bags.

This section became effective August 4, 2008. (JLM)

Ban on Toxic Brominated Fire Retardants

S.L. 2008-181, Sec. 6.10 (HB 2431, Sec. 6.10) provides that the Environmental Review Commission may study, in consultation with the Child Fatality Task Force, a ban on toxic brominated fire retardants. The Commission must report any findings, together with any legislative recommendations, to the 2009 Regular Session upon its convening.

This section became effective August 4, 2008. (JM)

Recycling Program for Fluorescent Lamps

S.L. 2008-181, Sec. 6.11 (HB 2431, Sec. 6.11) provides that the Environmental Review Commission, in conjunction with the Division of Pollution Prevention and Environmental Assistance in the Department of Environment and Natural Resources, may study the issue of a recycling program for fluorescent lamps. The Commission must report any findings, together with any legislative recommendations, to the 2009 Regular Session upon its convening.

This section became effective August 4, 2008. (JM)

Increase Aquaculture Production, Processing, and Marketing

S.L. 2008-181, Part XI (HB 2431, Part XI) authorizes the Joint Legislative Commission on Seafood and Aquaculture to study the feasibility of increasing the production, processing, and marketing of aquaculture products in the State. The study would include an analysis of:

- The current and potential economic impact of the aquaculture industry in the State.
- The current and potential environmental impacts of the aquaculture industry in the State.
- Regulatory changes that may be necessary to increase the production, processing, and marketing of aquaculture products in the State.
- Programs to promote the production, processing, and marketing of aquaculture products in other states.
- The desirability of establishing a State-funded shellfish hatchery.
- Funding necessary to increase the production, processing, and marketing of aquaculture products in the State.

The Commission may report its findings, together with any recommended legislation, to the 2009 Regular Session of the General Assembly upon its convening.

This part became effective August 4, 2008. (JH)

Referrals to Departments, Agencies, Etc.

Coastal Sounds Wind Energy Study

S.L. 2008-107, Sec. 9.12 ([HB 2436](#), Sec. 9.12) requires the University of North Carolina to study the feasibility of establishing wind turbines in the Pamlico and Albemarle Sounds. The study must include an analysis of energy production potential (including the resulting benefits attributable to a reduction in dependence on fossil fuel combustion for electricity generation), siting, ecological impacts, and statutory or regulatory barriers to construction and operation of one or more wind turbines and associated support and interconnection facilities in the coastal sounds. The study also must consider the feasibility and potential synergistic effects of co-siting wind turbines and artificial oyster reefs.

The Board of Governors must use available funds from its budget to conduct this study and may apply for, receive, or accept grants and contributions from any source for the purpose of conducting the study.

The Board must report the results of this study to the House Committee on Energy and Energy Efficiency and the Senate Committee on Agriculture/Environment/Natural Resources by July 1, 2009.

This section became effective July 1, 2008. (JM)

Study Plastics Use

S.L. 2008-107, Sec. 9.17 ([HB 2436](#), Sec. 9.17) directs The University of North Carolina, in collaboration with the Division of Waste Management of the Department of Environment and Natural Resources, to study the current state, usage, and recycling of plastics in North Carolina. The study should include the impact of plastics on the environment, particularly solid waste management, the current prevalence and utilization of recycling, technical and regulatory barriers to increased recycling of plastics, current and potential benefits to the State economy from enhancement in plastics recycling, and the potential of substitution of biodegradable plastics and plastics from renewable materials, as well as recommendations of potential policy or statutory changes needed. Available funds from The UNC and DENR budgets will be used in conducting the study, as well as grants or contributions from any other sources. The study must be reported by May 1, 2009, to the House of Representatives Committee on Energy and Energy Efficiency and the Senate Committee on Agriculture/Environment/Natural Resources.

This section became effective July 1, 2008. (KM)

Study Adding Area Surrounding Rutherford Trace to State Parks System

S.L. 2008-107, Sec. 12.12 ([HB 2436](#), Sec. 12.12) directs the Division of Parks and Recreation of the Department of Environment and Natural Resources to: (i) study the feasibility and the desirability of acquiring land and establishing a State park for inclusion in the State Parks System on property surrounding Rutherford Trace in McDowell County; and (ii) report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission and to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources no later than February 1, 2009.

This section became effective July 1, 2008. (JLM)

Chapter 11

Finance

Cindy Avrette (CA), Judy Collier (JC), Heather Fennell (HF), Trina Griffin (TG)
For a more detailed explanation, see the **2008 Finance Law Changes** publication

Enacted Legislation

Deferred Property Tax Programs Changes

S.L. 2008-35 (SB 1876) modifies the property tax circuit breaker program, enacted by the General Assembly last session to ease the administration and implementation of the program. The act establishes uniform provisions for all of North Carolina's property tax deferral programs to eliminate disparity in terminology and administration, consolidates the rules concerning enforced collection remedies into one statute, and makes other necessary technical, clarifying, and conforming changes to the property tax statutes.

This act became effective for taxes imposed for taxable years beginning on or after July 1, 2008. (CA)

Modify Appropriations Act of 2007

North Carolina Wine and Grape Growers Council/Additional Funds for Research and Development

S.L. 2008-107, Sec. 13.6A (HB 2436, Sec. 13.6A) directs the Secretary of Revenue (Secretary) to credit an additional \$100,000 from the net proceeds of the excise tax collected on unfortified wine to the Department of Commerce (Department) for use by the North Carolina Wine and Grape Growers Council (Council) to contract for research and development services to improve viticultural and enological practices in North Carolina. The Secretary must credit 25% of the funds to the Department on a quarterly basis. The Secretary will continue to credit \$200,000 quarterly to the Department for use by the Council to promote North Carolina's grape and wine industry. Prior to this change, the Council funded both the promotion of the State's grape and wine industry, as well as research and development, from the \$800,000 annual allocation.

This section becomes effective October 1, 2008. (CA)

Transfer Highway Trust Fund Monies to the North Carolina Turnpike Authority for Debt Service on Bonds

S.L. 2008-107, Sec. 25.5 (HB 2436, Sec. 25.5) reduces the transfer from the Highway Trust Fund to the General Fund from \$170 million to \$71 million (a \$99 million reduction) over 3 years. These funds will be used as follows:

- \$25 million to fund the debt service on the Triangle Expressway beginning in fiscal year 2008-09.
- \$39 million to fund the debt service on the Monroe Connector/Bypass and Mid-Currituck Bridge beginning in fiscal year 2009-10. This allocation is in addition to the \$25 million allocated for the Triangle Expressway.
- \$35 million to fund the debt service on the Garden Parkway beginning in fiscal year 2010-11. This allocation is in addition to the \$25 million allocated for the Triangle

Expressway and the \$39 million allocated for the Monroe Connector/Bypass and Mid-Currituck Bridge.

This section became effective July 1, 2008. (CA)

Internal Revenue Code Update

S.L. 2008-107, Sec. 28.1 ([HB 2436](#), Sec. 28.1) updates from January 1, 2007, to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina will conform to changes made by three federal acts, except that the act delays the impact of the bonus depreciation provision authorized by the Economic Stimulus Act. To accomplish this "decoupling" from the federal accelerated depreciation provision, the act does two things:

- It requires the taxpayer to add back to federal taxable income 85% of the accelerated depreciation amount (50%) in the year the accelerated depreciation is claimed for federal purposes. The add back means that for State tax purposes, a taxpayer will deduct less in that tax year than the taxpayer would have deducted if the State conformed to the accelerated depreciation law.
- In tax years beginning on or after January 1, 2009, the taxpayer may deduct from federal taxable income the total amount of the add back required for either the 2007 or 2008 tax year, divided into five equal installments. This means that for State tax purposes, a taxpayer is allowed to deduct a greater depreciation amount in the outlying tax years – the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. Over the life of an asset placed in service during 2008, taxpayers will be able to deduct the same amount of the asset's basis under both federal and State law; it is just that the timing of the deduction will differ.

This section became effective for taxable years beginning on or after January 1, 2008.

(CA)

Extend Credit for Research and Development

S.L. 2008-107, Sec. 28.2 ([HB 2436](#), Sec. 28.2) extends the tax credit for research and development through taxable years beginning on or after January 1, 2014. The credit was scheduled to expire for taxable years beginning on or after January 1, 2009. A taxpayer that has qualified North Carolina research expenses or North Carolina University research expenses is allowed a tax credit. For North Carolina University research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a specified percentage of the expenses.

This section became effective July 1, 2008. (CA)

Extend Low-Income Housing Credit

S.L. 2008-107, Sec. 28.3 ([HB 2436](#), Sec. 28.3) extends the low-income housing tax credit through taxable years beginning on or after January 1, 2015. The credit was scheduled to expire for taxable years beginning on or after January 1, 2010. North Carolina has a low-income housing tax credit modeled after the federal housing credit. A taxpayer may elect to receive the credit in the form of either a credit against tax liability or a loan generated by transferring the credit to the Housing Finance Authority in return for a 0% interest, 30-year balloon loan equal to the credit amount.

This section became effective July 1, 2008. (CA)

Extend Mill Rehabilitation Tax Credit

S.L. 2008-107, Sec. 28.4 (HB 2436, Sec. 28.4) extends the mill rehabilitation tax credit to include rehabilitation projects for which an application for an eligibility certification is submitted on or after January 1, 2011. Under prior law, the credit sunset for rehabilitation expenditures incurred on or after January 1, 2011. North Carolina allows a tax credit for rehabilitating vacant historic manufacturing sites if the taxpayer spends at least \$3 million to rehabilitate the site. The credit is a percentage of the qualified rehabilitation expenditures, and the percentage varies depending on the enterprise tier location of the site and the eligibility for the federal credit.

This section became effective for taxable years beginning on or after January 1, 2008. (CA)

Extend Sunset for State Ports

S.L. 2008-107, Sec. 28.5 (HB 2436, Sec. 28.5) extends the State ports tax credit through taxable years beginning on or after January 1, 2014. The credit was scheduled to expire for taxable years beginning on or after January 1, 2009. The General Assembly enacted the State Ports tax credit in 1992 to encourage exporters to use the two State-owned port terminals in Wilmington and Morehead City. The credit is allowed to a taxpayer who loads or unloads waterborne cargo from an ocean carrier at the State-owned port terminal at Wilmington or Morehead City. The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. The maximum cumulative credit that one taxpayer may claim is \$2 million.

This section became effective July 1, 2008. (CA)

Exempt Disaster Assistance Debit Sales

S.L. 2008-107, Sec. 28.6 (HB 2436, Sec. 28.6) exempts from sales tax tangible personal property purchased with a client assistant debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality to the same extent a disbursing order issued by the agency would be exempt. In the past, the American Red Cross (ARC) provided disaster assistance relief by giving disaster victims a disbursing order to purchase items that the victim needed. The State may not impose its sales tax on purchases made by the federal government or an instrumentality of the federal government. The ARC is an instrumentality of a federal agency. Therefore, sales made pursuant to a disbursing order issued by the ARC are considered a sale to the ARC that is exempt from taxation. Over the last few years, the ARC has begun giving disaster victims debit cards to use to purchase these same items. For purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order: the purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used, and it is the ARC when the disbursing order is used.

This section became effective August 1, 2008. (CA)

Close Franchise Tax Loopholes by Requiring a Limited Liability Company that Elects to be Treated as a Corporation and a Captive Real Estate Investment Trust to Pay Franchise Tax

S.L. 2008-107, Sec. 28.7 (HB 2436, Sec. 28.7) does both of the following:

- It provides that limited liability companies that elect to be taxed as S corporations for income tax purposes are subject to the franchise tax in the same manner as other S corporations.
- It provides that captive real estate investment trusts (REITs) are subject to the franchise tax in the same manner as a corporation. In 2007, the General Assembly provided that captive REITs are treated as regular corporations for income tax purposes. A REIT is an organization that uses the pooled capital of many investors to purchase and manage real estate. A REIT that is owned or controlled by a single entity is commonly referred to as a captive REIT.

This section becomes effective for taxable years beginning on or after January 1, 2009.

(CA)

Publicly Traded Partnerships

S.L. 2008-107, Sec. 28.8 ([HB 2436](#), Sec. 28.8) changes the reporting and payment requirements that apply to a publicly traded partnership (PTP) that is described in section 7704(c) of the Internal Revenue Code. It requires a qualifying PTP to report annually to the Department of Revenue (Department) the partners in the PTP who received more than \$500 of income, rather than report the income received by every partner. It also exempts qualifying PTPs from the requirement to pay tax on the partnership income received by a nonresident. In making these changes, the provision seeks to strike a balance between the costs and burden of compliance with the reporting requirements for both the PTPs and the Department and the benefits gained by compliance. The provision is substantially the same as the model legislation recommended by the Multi-State Tax Commission. A PTP is a limited partnership the interests in which are traded on stock exchanges such as the New York, American, and NASDAQ exchanges. Unlike a traditional partnership, a PTP has tens of thousands, and sometimes hundreds of thousands, of unitholders. A PTP's unitholders can change daily in trades on public exchanges. There are approximately 90 PTPs in the country, and 10 of these PTPs are located in North Carolina.

This section becomes effective for taxable years beginning on or after January 1, 2009.

(CA)

Increase Earned Income Tax Credit to 5%

S.L. 2008-107, Sec. 28.9 ([HB 2436](#), Sec. 28.9) increases the refundable State-earned income tax credit (EITC), enacted last session, from 3.5% of an individual's federal earned income tax credit to 5% of the federal credit amount. The amount of the federal credit varies depending upon whether the taxpayer has children and the amount of earned income the taxpayer has. The credit is phased out as the taxpayer's earned income rises. The federal earned income amounts and credit amounts are indexed to inflation. The State EITC expires for taxable years beginning on or after January 1, 2013.

This section becomes effective for taxable years beginning on or after January 1, 2009.

(CA)

Extend Sunset for Small Business Employee Health Benefits

S.L. 2008-107, Sec. 28.9A ([HB 2436](#), Sec. 28.9A) extends the Small Business Employee Health Insurance tax credit through taxable years beginning on or after January 1, 2010. The credit was scheduled to expire for taxable years beginning on or after January 1, 2009. The General Assembly enacted the tax credit in 2006. The credit is allowable to a small business that provides health benefits to its full-time employees. A small business is a taxpayer that employs no more than 25 full-time employees. An eligible employee is one who works a normal workweek

of 30 or more hours and whose total wages or salary received from the business does not exceed \$40,000 on annual basis.

This section becomes effective January 1, 2009. (CA)

Property Tax Exclusion for Honorably Discharged Disabled Veterans and Their Surviving Spouses

S.L. 2008-107, Sec. 28.11 (HB 2436, Sec. 28.11) establishes a property tax homestead exclusion for disabled veterans equal to the first \$45,000 of the property's appraised value. An owner who receives this exclusion may not receive other property tax relief.

This section becomes effective for taxes imposed for taxable years beginning on or after July 1, 2009. (CA)

Sales Tax Holiday for Certain Energy Star Rated Appliances

S.L. 2008-107, Sec. 28.12 (HB 2436, Sec. 28.12) creates a sales tax holiday during the first weekend in November for certain energy star rated appliances. The holiday applies to the following Energy Star products: clothes washers, freezers and refrigerators, central air conditioners and room air conditioners, air-source heat pumps and geothermal heat pumps, ceiling fans, dehumidifiers, and programmable thermostats. Energy Star is a joint program of the United States Environmental Protection Agency and the United States Department of Energy designed to help save money and protect the environment through energy efficient products and practices.

This section became effective July 1, 2008. (CA)

Small Business Protection Act

S.L. 2008-107, Sec. 28.16 (HB 2436, Sec. 28.16) provides small businesses with certain protections related to their sales and use tax obligations, including the reduction of an assessment for good faith compliance, requires the Department of Revenue (DOR) to internally document verbal advice given to certain taxpayers, requires the DOR to waive penalties and any additional assessment for a taxpayer who reasonably relied on erroneous verbal advice properly documented, and gives the DOR more flexibility with regard to offers in compromise.

This section became effective July 1, 2008. (CA)

Modify Estate Tax Law

S.L. 2008-107, Sec. 28.17 (HB 2436, Sec. 28.17) modifies the estate tax law to remove property from the estate tax base that the State cannot tax.

This section became effective July 1, 2008, and applies retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007. (CA)

Repeal Gift Tax Law

S.L. 2008-107, Sec. 28.18 (HB 2436, Sec. 28.18) repeals the State gift tax.

This section becomes effective January 1, 2009, and applies to gifts made on or after that date. (CA)

State Sales Tax Exemption for Baked Goods Sold by Artisan Bakeries

S.L. 2008-107, Sec. 28.19 (HB 2436, Sec. 28.19) creates a sales tax exemption for artisan bakeries. An artisan bakery is a bakery that derives over 80% of its gross receipts from bakery items and its annual gross receipts, combined with the gross receipts of all related persons, do not exceed \$1.8 million.

This section becomes effective January 1, 2009. (CA)

Prohibit Tax on Interior Design Services

S.L. 2008-107, Sec. 28.20 (HB 2436, Sec. 28.20) eliminates the sales and use tax on interior design services provided in conjunction with the sale of tangible personal property. The act does not address other transactions in which the tangible personal property transferred is largely the result of personal services.

This section became effective August 1, 2008. (CA)

Excise Tax on Machinery Refurbishers

S.L. 2008-107, Sec. 28.21 (HB 2436, Sec. 28.21) exempts equipment purchased by a machinery refurbishing company from the sales and use tax and imposes a 1%, \$80 excise tax on the purchases.

This section became effective July 1, 2008. (CA)

Clarify 501(c)(3) Sales Tax Refund

S.L. 2008-107, Sec. 28.22 (HB 2436, Sec. 28.22) provides a definitive category of the type of nonprofit entity entitled to a semiannual sales and use tax refund. Under prior law, certain charitable organizations were entitled to a sales and use tax refund. The statute did not define "charitable organization," so the Department of Revenue (DOR) would have to make a determination as to what was a charitable organization. The DOR based its determinations on past determinations and court decisions. In May of 2008, the North Carolina Court of Appeals upheld a trial court's ruling that the DOR erred in denying a sales and use tax refund to The Lynnwood Foundation. Under *Southmister, Inc. v. Justice*, the court defined the term charitable organization broadly as one "engaged in the relief or aid to a certain class of persons, a corporate body established for public use, or a private institution created and maintained for the purposes of dispensing some public good or benevolence to those who require it." The intent of the legislation is to clarify the current law, not to expand it. It removes the need for the DOR to determine whether an organization is a nonprofit charitable one by providing a bright line test: a nonprofit entity is an organization exempt from income tax under 501(c)(3) of the Internal Revenue Code.

This section became effective July 1, 2008, and applies to purchases made on or after that date. (CA)

Extend Aviation Fuel Refunds

S.L. 2008-107, Sec. 28.23 (HB 2436, Sec. 28.23) extends the sunset on two sales tax refund provisions, from January 1, 2009, to January 1, 2011:

- Aviation fuel used by an interstate passenger air carrier.
- Aviation fuel used by a motorsports racing team to travel to or from a motorsports event in another state to this State.

This section became effective July 1, 2008. (CA)

Expand Film Industry Credit and Extend Sunset

S.L. 2008-107, Sec. 28.24 (HB 2436, Sec. 28.24) makes the following changes to the film industry income tax credit:

- It allows a production company to include in its qualifying expenses up to \$1 million of the compensation paid to a highly compensated individual.
- It allows a production company to include in its qualifying expenses the cost of insurance coverage for production-related insurance that is obtained on the production.
- It requires a taxpayer who claims the credit to file an intent-to-film notice with the North Carolina Film Office.
- It requires a taxpayer to acknowledge in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming of the production occurred.
- It extends the sunset on the tax credit, from January 1, 2010, to January 1, 2015.

This section becomes effective for taxable years beginning on or after January 1, 2008.

(CA)

Expand Renewable Energy Tax Credit

S.L. 2008-107, Sec. 28.25 (HB 2436, Sec. 28.25) expands the tax credit for donating funds to a nonprofit organization to enable the nonprofit to acquire renewable energy property to include funds donated to a State or local governmental unit.

This section becomes effective for taxable years beginning on or after January 1, 2008.

(CA)

Increase Qualified Business Venture Tax Credit

S.L. 2008-107, Sec. 28.26 (HB 2436, Sec. 28.26) increases the total amount of the credit available annually to all taxpayers from \$7 million to \$7.5 million. The credit is equal to 25% of the amount invested in a qualified business and may not exceed \$50,000 per individual in a single taxable year. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer files an application with the Secretary of Revenue. Any unused credit may be carried forward for the next five years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed \$7.5 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of \$7.5 million in tax credits in proportion to the size of the credit claimed by each taxpayer. The tax credit expires for taxable years beginning on or after January 1, 2015.

This section becomes effective for investments made on or after January 1, 2008. (CA)

Tax Deduction for the Sale of a Manufactured Home Community to Manufactured Homeowners

S.L. 2008-107, Sec. 28.27 (HB 2436, Sec. 28.27) creates an income tax deduction equal to the taxable gain reported by a taxpayer from the qualified sale of a manufactured home community. A "qualified sale of a manufactured home community" is defined as the sale of land

comprising a manufactured home community that is transferred in a single purchase to a group composed of a majority of the manufactured home community leaseholders, or to a nonprofit organization representing such a group.

This section became effective for taxable years beginning on or after January 1, 2008. (CA)

Procedure for Tax Class Actions

S.L. 2008-107, Sec. 28.28 ([HB 2436](#), Sec. 28.28). See **Civil Law and Procedure**.

Sales Tax Refund for Solar Electricity Facilities

S.L. 2008-118, Sec. 3.10 ([HB 2438](#), Sec. 3.10) allows an annual sales tax refund for materials used to build a facility to manufacture solar electricity-generating materials. To be eligible for this refund, the Secretary of Commerce must certify that the owner of the facility will invest at least \$50 million of private funds in the construction of the facility, if the facility is located in a development tier one area, and at least \$100 million, if the facility is located elsewhere in the State. In addition to the investment requirement, a solar electricity-generating materials manufacturing business also must meet a wage standard in order to qualify for the sales tax refund. A business meets the wage standard if it pays an average weekly wage that is equal to or greater than 110% of the average weekly wage for the State or the average weekly wage for the county, whichever is less. The refund provision expires for purchases made on or after January 1, 2013.

This section became effective July 1, 2008. (CA)

Revenue Laws Technical, Clarifying, and Administrative Changes

S.L. 2008-134 ([SB 1704](#)) makes several technical, clarifying, and administrative changes to the revenue laws and related statutes as recommended by the Revenue Laws Study Committee.

This act became effective July 28, 2008. (CA)

Tax on Short-Term Heavy Equipment Rentals

S.L. 2008-144 ([SB 1852](#)) excludes from property tax certain heavy equipment that is offered at retail for short-term lease or rental, if the heavy equipment is leased or rented out by a person whose principal business is the short-term lease or rental of heavy equipment. The act replaces the property tax on heavy equipment with a local option gross receipts tax.

This act becomes effective for taxable years beginning on or after July 1, 2009. (CA)

Property Tax Modifications

S.L. 2008-146 ([SB 1878](#)) makes the following changes to the property tax laws:

- It modifies the schedule for general reappraisals of real property to reduce the discrepancy between the property tax value and its market value. It requires a county with a population of 75,000 or more to conduct a reappraisal of real property whenever its sales tax assessment ratio is less than .85 or greater than 1.15. Other counties may advance their octennial schedule, if the board of county commissioners adopts a resolution providing for such advancement. This portion of the act becomes effective July 1, 2009.

- It modifies the present-use value ownership requirements to reflect modern estate planning and allows property to remain in present-use value when deferred taxes are paid at the time of transfer and the new owner continues to farm the land and files an application for present-use value status. This part of the act became effective for taxes imposed for taxable years beginning on or after July 1, 2008.
- It classifies qualified North Carolina low-income housing developments as a special class of property and requires valuation of the property to be based on the actual (rent restricted) income. This part of the act becomes effective for taxes imposed for taxable years beginning on or after July 1, 2009.
- It exempts from property tax free samples of prescription drugs given to physicians and other medical practitioners to dispense free of charge in the course of their practice. This part of the act became effective for taxes imposed for taxable years beginning on or after July 1, 2008.
- It excludes 80% of the appraised value of a solar energy electric system from property tax. This part of the act became effective for taxes imposed for taxable years beginning on or after July 1, 2008.
- It directs the Revenue Laws Study Committee to study the following:
 - Whether new positions are needed to perform sales assessment ratio studies in additional counties and other functions related to the act.
 - The definition of income as it applies to the homestead exclusion.

Except as otherwise noted above, this act became effective August 2, 2008. (CA)

Economic Development Modifications

S.L. 2008-147 ([SB 2075](#)) clarifies the following relating to multi-jurisdictional industrial parks (MIPs):

- An MIP does not lose its tier one status when a parcel of land is sold from the MIP, even though the sale of the parcel may reduce the site's developable acres to less than the statutorily required 250 acres.
- The availability of incentives to successive purchasers of parcels located in the MIP is based on the MIP's original tier status.

This act became effective August 2, 2008. (CA)

Supplemental Public, Educational, and Governmental Support

S.L. 2008-148 ([SB 1716](#)) clarifies the distribution of supplemental public educational and governmental (PEG) channel support. A PEG channel is a public, educational, or governmental access channel provided to a county or city. In 2006, the General Assembly established a uniform sales tax structure for video programming services, and it allocated \$2 million of the tax revenue derived from video programming services to supplement local funding of qualifying PEG channels. At the time the General Assembly considered the legislation in 2006, the information collected indicated that there would be 36 qualifying PEG channels. There were 276 certified PEG channels in the March 2008 distribution. In working with the data, the Revenue Laws Study Committee staff and the League of Municipalities believe that the form used by the Department of Revenue was not as clear as it could be. This confusion may have resulted in some channels being counted twice and in some channels receiving a distribution, although they did not qualify for one. This act clarifies the distribution requirements, reduces the number of channels receiving the distribution, and provides that all qualifying PEG channels receive supplemental PEG support funding.

The act also does the following:

- It clarifies the distribution of supplemental PEG channel support funding.

- It amends the video franchising statutes to clarify that if the stated boundary of a cable service district is the boundaries of a city, then the service area includes any subsequent annexations by the city. Under this revision, a new notice of franchise would need to be filed if the original notice of franchise stated that the boundaries of the service area were the boundaries of the city, as those boundaries existed on a day certain.

This act became effective August 2, 2008. (CA)

Sales Tax Refund for Certain Nonprofits

S.L. 2008-154 (HB 2509) allows a nonprofit organization that procures, designs, constructs, or provides facilities to a constituent institution of The University of North Carolina a semi-annual refund of sales and use taxes paid by it on direct purchases of tangible personal property and services for use in carrying on the work of the nonprofit entity. The refund allowed does not apply to sales tax paid on electricity or telecommunications services. Sales and use tax indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of a building or structure owned or leased by the nonprofit is considered a sales or use tax liability incurred on a direct purchase. Constituent institutions of The University of North Carolina have begun to use nonprofit organizations to procure, design, and construct facilities, such as student housing and dining facilities, on their behalf.

This act became effective January 1, 2004, and applies to purchases made on or after that date. (CA)

Future Conveyances/Special Assessments

S.L. 2008-165 (HB 1770) does both of the following:

- It specifies that a conservation agreement and historic preservation agreement may provide for payment of fees upon a future conveyance of the property subject to the agreement.
- It gives counties and cities an additional financing tool for water and sewer systems, storm drainage systems, public transportation facilities, and schools by allowing them to impose a long-term assessment on benefited property and use the assessment to secure revenue bonds. It achieves this goal by piggy-backing existing assessment authority and revenue bond authority available to counties and cities. This part of the act expires July 1, 2013.

This act became effective August 3, 2008. (CA)

Wildlife Land Property Tax Changes

S.L. 2008-171 (HB 1889) designates wildlife conservation land as a special class of property, for property tax purposes, that will be appraised and taxed as if it were classified as agricultural land. To qualify for the preferential property tax classification, the property must meet the following requirements:

- It must consist of at least 20 contiguous acres.
- It must be owned by an individual, family business, entity, or family trust and have been owned by the same owner for the previous five years (with exceptions).
- The owner of the land must manage the land, pursuant to a written wildlife habitat conservation agreement with the Wildlife Resources Commission, either to protect an animal species or conserve priority wildlife habitats.
- It must have been classified as agricultural land, horticultural land, or forestland when the wildlife habitat agreement was signed, or the owner must demonstrate

that the owner has been using the land for a purpose listed in the signed agreement for three years preceding January 1 of the year for which the benefit is claimed.

When the land loses its eligibility for this special classification, the deferred taxes for the previous three years become due. This part of the act becomes effective for taxes imposed for taxable years beginning on or after July 1, 2010.

The act directs the Revenue Laws Study Committee to study the three-year impact of the wildlife conservation land classification. The Committee is to report to the 2015 General Assembly.

The act also exempts from property tax a leasehold interest in property if the following two conditions are met:

- The property itself is exempt from property tax because it is owned by a unit of government.
- The property is used to provide affordable housing for employees of the unit of government that owns the property.

This part of the bill became effective for taxes imposed for taxable years beginning on or after July 1, 2008.

Except as otherwise noted above, this act became effective August 4, 2008. (CA)

The University of North Carolina Nonappropriated Capital Projects/Airport Authority

S.L. 2008-204 ([SB 1925](#)) does all of the following:

- It authorizes the construction of numerous projects by The University of North Carolina (UNC). The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund.
- It modifies the procurement provisions applicable to the Gateway University Research Park, Inc.
- It allows the UNC Board of Governors to create an airport authority to support the mission of the University of North Carolina at Chapel Hill or the University of North Carolina Health Care System.
- It authorizes the State Education Assistance Authority to set the interest rate for three scholarship programs in an amount not to exceed 10% per year, instead of the current fixed rate of 10%. This part of the act becomes effective January 1, 2009, and applies to all scholarship loans issued on and after July 1, 2009.
- It allows North Carolina to issue tax-exempt qualified educational facility bonds, the proceeds of which are used by a private for-profit corporation that has entered into a public-private partnership agreement with a local school administrative unit to construct, rehabilitate, refurbish, or equip an elementary or secondary public school.

Except as otherwise noted above, this act became effective August 8, 2008. (CA)

Home Inspector Privilege License

S.L. 2008-206 ([HB 2558](#)) imposes a \$50 State privilege license tax on individuals licensed under the Home Inspector Licensure Act. By imposing a State licensure tax on this profession, cities no longer have the authority to impose a local tax on this profession. Although the act applies to taxable years beginning on or after July 1, 2008, cities that impose and collect a local privilege tax for the 2008-2009 fiscal year may impose and collect that tax for that fiscal year.

This act became effective August 9, 2008. (CA)

Solid Waste Tax Changes/Unsalable Other Tobacco Products Refund

S.L. 2008-207 (HB 2530) does all of the following:

- It makes the following administrative changes to the Solid Waste Disposal Tax that became effective July 1, 2008.
 - Clarifies that the tax and return are due on a quarterly basis.
 - Allows a taxpayer to recover the tax paid on tonnage it received, but for which it was not compensated, if the taxpayer has deducted the amount from its gross income as a bad debt.
 - It excludes a city or county from receiving proceeds if it does not provide solid waste management programs and services and is not responsible by contract for payment, unless the city or county is served by a regional solid waste management authority. If the city or county is served by the authority, then the city or county must forward the amount of proceeds it receives to that authority. To assist the Department of Revenue (DOR) with distribution, the Department of Environment and Natural Resources must provide DOR with a list of cities and counties that are excluded by May 15 of each year.
- It allows a refund of the tax paid on unsalable other tobacco products. A similar provision already exists for cigarettes and cigars. This part of the act becomes effective October 1, 2008, and applies to products returned on or after that date.

Except as otherwise noted above, this act became effective August 9, 2008. (CA)

Studies

Referrals to Existing Commissions/Committees

Taxation Study

S.L. 2008-107, Sec. 28.16 (HB 2436, Sec. 28.16) directs the Revenue Laws Study Committee to consider the following issues:

- The taxation of services necessary to complete the sale of tangible personal property and standards for distinguishing between a service that is taxable as one that is necessary to complete the sale and a service that is incidental to the sale of tangible personal property.
- The applicability of the sales and use tax to performance contracts and standards for distinguishing between performance contractors and retailers.
- The distinction between food and prepared food under the sales and use tax laws and whether to eliminate this distinction by applying a uniform, revenue-neutral rate to all food.

This section became effective July 1, 2008. (CA)

Property Tax Modifications

S.L. 2008-146 (SB 1878) directs the Revenue Laws Study Committee to study the following:

- Whether new positions are needed to perform sales assessment ratio studies in additional counties and other functions related to the act.
- The definition of income as it applies to the homestead exclusion.

This act became effective August 2, 2008. (CA)

Wildlife Land Property Tax Changes

S.L. 2008-171, Sec. 6 (HB 1889, Sec. 6) directs the Revenue Laws Study Committee to study the three-year impact of the wildlife conservation land classification, as enacted by this act. The Committee is to report to the 2015 General Assembly.

This section became effective August 4, 2008. (CA)

Franchise Tax/Effect on Construction Industry

S.L. 2008-181, Sec. 7.2 (HB 2431, Sec. 7.2) directs the Revenue Laws Study Committee to consider the treatment of certain liability accounts as they relate to the computation of the franchise tax capital stock, surplus, and undivided profits base of corporations in the construction industry.

This section became effective August 4, 2008. (CA)

Chapter 12
Health and Human Services

Susan Barham (SB), Erika Churchill (EC),
Shawn Parker (SP), Ben Popkin (BP)

Enacted Legislation

Use of Social Security Numbers on Child Support Court Orders

S.L. 2008-12 (HB 724). See **Courts, Justice and Corrections**.

Disapprove Nursing Faculty Requirements Rule

S.L. 2008-14 (SB 1662). See **Occupational Boards and Licensing**.

Autism Committee Recommendations

S.L. 2008-83 (HB 2523) authorizes the North Carolina Center for Missing Persons to issue a Silver Alert for missing persons of any age believed to be suffering from dementia or other cognitive impairment by removing the requirement that the missing person must be 18 years of age or older.

The act directs The University of North Carolina at Chapel Hill Division TEACCH Autism Program (TEACCH), in consultation with the School of Government (SOG) and the Autism Society of North Carolina, to develop a video to raise awareness of autism for those in government and public service. The video should include information on recognizing signs and symptoms of autism spectrum disorder and provide contacts for information on appropriate responses to persons with autism.

The act directs SOG, in consultation with the Autism Society of North Carolina, TEACCH, and other organizations, to study and determine additional training needs to ensure appropriate responses to persons with autism within the legal system. The section further directs SOG to develop a proposal for funding and delivering the necessary training and report to the Joint Study Committee on Autism Spectrum Disorder and Public Safety by October 1, 2008.

This act became effective July 11, 2008. (SP)

Regional Interagency Coordinating Councils Repealed

S.L. 2008-85 (HB 2127) repeals the statutory provision that established Regional Interagency Coordinating Councils for Children from Birth to Five with Disabilities and Their Families. Repealing this section of the statutes eliminates a duplication of responsibilities that resulted from recent federal action to address early intervention and developmental services for children.

This act became effective July 11, 2008. (SB)

Public Health Incubator Program Annual Report

S.L. 2008-92 ([SB 1687](#)) directs the North Carolina Public Health Incubator Program (Program), established within the North Carolina Institute for Public Health, to report by October 1, 2008, and annually thereafter to the Public Health Study Commission on the following:

- The status of the Program's primary mission to support voluntary local health department collaborative efforts, in partnership with the Department of Health and Human Services, Division of Public Health, and to address the State's regional health needs.
- The Program's efforts to address urgent public health needs as identified in the 2008 final report of the Public Health Task Force's Public Health Improvement Plan.

This act became effective July 11, 2008. (SB)

Community College Tobacco Free Policies

S.L. 2008-95 ([SB 1669](#)) authorizes local community college boards of trustees to adopt policies regulating tobacco use in community college settings. The act provides elements to consider when adopting these policies and directs the North Carolina Tobacco Prevention and Control Branch and the Health and Wellness Trust Fund Commission to provide assistance to boards of trustees in developing policies.

This act became effective July 11, 2008. (SP)

AIDS Drug Assistance Program

S.L. 2008-107, Sec. 10.3 ([HB 2436](#), Sec. 10.3) directs the Department of Health and Human Services to increase, within existing program resources, the financial eligibility criterion of the AIDS Drug Assistance Program (ADAP) up to an amount not exceeding 300% of the federal poverty level. If a waiting list develops, first priority must be given to individuals on the waiting list with an income at or below 125% of the federal poverty level. Second priority must be given to individuals with an income above 125% and at or below 250% of the federal poverty guidelines.

This section became effective July 1, 2008. (SB)

Nicotine Replacement Therapy Programs

S.L. 2008-107, Sec. 10.4B ([HB 2436](#), Sec. 10.4B) authorizes the Health and Wellness Trust Fund (Trust Fund) or the Department of Health and Human Services (Department) to contract for the operation of a tobacco-use cessation program. The program may include recommending and providing at no cost over-the-counter nicotine replacement therapy products. The Trust Fund or the Department must contract with a licensed physician to supervise all medical aspects of the program.

This section became effective July 1, 2008. (SP)

Medicaid Policy Changes

S.L. 2008-107, Sec. 10.10 ([HB 2436](#), Sec. 10.10) makes the following changes to Medicaid policy:

- Requires the Department of Health and Human Services (Department) prior to implementing policy changes that exceed \$3 million and are required for compliance with federal law, to submit proposed medical policy or policy interpretation changes to the Office of State Budget and Management.

- Provides that payments for "personal care services" must be in accordance with the State Plan and repeals the prior direction effective October 1, 2007, which required prior authorization on all "personal care services."
- Clarifies that changes made to G.S. 108A-54 in S.L. 2007-323 regarding authorization of the Medicaid Program apply to Medicaid claims paid by the State on and after June 1, 2009.
- Authorizes the Department to require Medicaid-enrolled providers to purchase a performance bond or submit an executed letter of credit as a condition of enrollment, reenrollment, or reinstatement under certain circumstances. Also requires the Department to provide affected providers written notice containing findings the action is based on and performance bond requirements. The section directs the Department to provide a report indicating the number of performance bonds required, the classes of providers required to purchase a performance bond, the number of waivers or limitations granted, and the classes of providers granted a waiver or limitation from the performance bond requirements by March 1, 2009.
- Effective August 1, 2008, the contractor managing the State Maximum Allowable Cost (SMAC) must provide information on a monthly basis to the Department on the savings attributable to adding the specialty drugs to the SMAC List. The section further provides that if savings are not being achieved by December 31, 2008, the Department must report this information immediately to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division and may add additional specialty drugs to the SMAC List necessary to achieve these savings by June 30, 2009.

This section became effective July 1, 2008. (SP)

Expand Health Choice/North Carolina Kids' Care

S.L. 2008-107, Sec. 10.12 ([HB 2436](#), Sec. 10.12) directs the Department of Health and Human Services, Division of Medical Assistance (Department), to implement North Carolina Kids' Care, a health care assistance program providing health insurance coverage to children from birth to age 18 in families with incomes between 200-250% of the federal poverty level (FPL), by expanding the Health Insurance Program for Children.

Funding and Enrollment - The section removes the provisions which directed the Department to use \$7 million of funds appropriated to the Department for the 2008-2009 fiscal year to expand access to health insurance to children with family incomes over 200%. The section provides that the Department may enroll eligible children based on availability of funds with no more than 15,000 children to be enrolled for the 2008-2009 fiscal year.

Benefits - Health care benefits coverage for North Carolina Kids' Care enrollees is identical to that provided by the Health Insurance Program for Children.

Eligibility - Children must meet the following criteria:

- Be 18 years of age or younger.
- Be in a family whose income is between 200-250% FPL.
- Be a State resident and meet applicable federal citizenship and immigration requirements.
- Not be eligible for Medicaid, Medicare, or other government-sponsored health insurance.
- Pay the monthly premiums as provided in the act.

Cost-sharing - Enrollees contribute to the cost of their care through the following:

- Premiums - \$30 per month per child for families with incomes of 200-225% FPL, and \$60 per month per child for families with incomes between 225-250% FPL.
- Co-payments in varying set amounts for each type of service used (Emergency Room visit, prescription drugs, office visit, etc.)
- Deductible of up to \$250 per year per child, as set by the Department.

- Maximum annual cost-sharing limit. The Department must set a maximum annual cost-sharing limit to ensure that total aggregate cost-sharing by family does not exceed 5% of the family's annual income.

The section amends current Health Choice provisions to specify that annual Health Choice enrollment fees (\$50 for one child, \$100 for two or more) must apply to families with incomes of 150-200% FPL (was families over 150% FPL). The act further amends current provisions regarding expanded Health Choice coverage as follows: allows for full premium-cost purchase of Health Choice coverage for children in families with incomes between 250-275% FPL (was 200-225% FPL) to reflect new coverage options offered under North Carolina Kids' Care; and provides that enrollees in expanded Health Choice coverage shall have the same benefits, co-payments and other enrollment conditions that apply to North Carolina Kids' Care enrollees in families with incomes of 250% FPL (was same as other Health Choice enrollees.)

This section becomes effective either July 1, 2009, or upon the reauthorization of the State Children's Health Insurance Program by the United States Congress with sufficient funding to support the current NC Health Choice program and the provisions of this act. (BP)

North Carolina Health Choice Transition

S.L. 2008-107, Sec. 10.13 ([HB 2436](#), Sec. 10.13) codifies the name of the Health Insurance Program for Children as North Carolina Health Choice for Children; conforms statutory language to reflect recent structural and name changes to the State Health Plan; adds sections creating the Child Health Insurance Fund to receive premiums receipts and from which to disburse payments for benefits and administrative costs of North Carolina Health Choice for Children; and sets data collection and reporting requirements for the program.

The section amends the General Statutes as follows:

- Codifies the name of the Health Insurance Program for Children as North Carolina Health Choice for Children.
- Makes conforming changes to references to State Health Plan as it existed prior to July 2008.
- Adds benefit provisions to address over-the-counter medication coverage (identical to Medicaid coverage) and includes medically necessary routine diagnostic examinations and tests.
- Removes outdated language from payment provisions.
- Revises cost-sharing limitation language to direct the Department of Health and Human Services (Department) to set a maximum annual cost-sharing limit per individual or family with the requirement that it not exceed 5% of the family's income for the year.
- Specifies that enrollee benefits shall not be subject to a maximum lifetime limit.
- Effective July 1, 2009, modifies dental coverage provisions.
- Authorizes the Department to have access to reimbursement rate and other medical benefits contract information "solely for the purpose of implementing the transition of NC Health Choice from the Plan (State Health Plan) to the Department."

The section directs the Secretary of the Department to develop and implement a plan to transition all Health Choice administrative oversight and claims processing activities from the State Health Plan to the Division of Medical Assistance. The transition must be completed no later than July 1, 2010, and the Secretary is directed to report to the Joint Legislative Health Care Oversight Committee and the Committee on Employee Hospital and Medical Benefits at least 30 days before the transition occurs.

Except where specifically noted in this summary, this section became effective July 1, 2008. (BP)

Health Choice Enrollment Growth Gap

S.L. 2008-107, Sec. 10.14 ([HB 2436](#), Sec. 10.14) permits the Department of Health and Human Services (Department) to allow up to 6% enrollment growth from June 30, 2008, for the North Carolina Health Choice Program. The Department is to report to the 2009 General Assembly on the following:

- The number of children enrolled in the North Carolina Health Choice Program during the first week of January, 2009.
- The projected enrollment and program costs, by month, for the remainder of the 2008-09 fiscal year.
- The status of current expenditures and availability of State and federal funds for the 2008-09 fiscal year.

If the report determines, or the Department determines at a later time, the enrollment will exceed 6%, the Department is to notify the Centers for Medicare and Medicaid Services that a freeze on new enrollments is anticipated.

The maximum new enrollment cap of 6 may be exceeded, up to 8.73%, if Congress reauthorizes SCHIP to provide sufficient federal funds or Congress appropriates additional federal funds.

This section became effective July 1, 2008. (EC)

Non-Medicaid Reimbursement Changes

S.L. 2008-107, Sec. 10.16 ([HB 2436](#), Sec. 10.16) deletes language regarding income eligibility levels for adult enrollment in the Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

This section became effective July 1, 2008. (BP)

Enhance Rape Victims Assistance Program

S.L. 2008-107, Sec. 18.2 ([HB 2436](#), Sec. 18.2). See **Criminal Law and Procedure**.

Newborn Screening Fee Changes

S.L. 2008-107, Sec. 29.4 ([HB 2436](#), Sec. 29.4) increases the fee for a laboratory test under the Newborn Screening Program from \$14 to \$19 and amends the statute to clarify that the fee is a departmental receipt to be used to offset the cost of the Newborn Screening Program.

This section became effective July 20, 2008. (SP)

Health Care Facility Construction Project Fee Increases

S.L. 2008-107, Sec. 29.5 ([HB 2436](#), Sec. 29.5) increases the fees the Department of Health and Human Services charges for the review of health care facility project plans and construction to ensure compliance with State law. The section increases health care facility project fees for hospitals, nursing homes, adult care homes, ambulatory surgical facilities, psychiatric facilities, and residential construction projects.

This section became effective July 20, 2008. (SB)

Report Race and Ethnicity Data - Public Health

S.L. 2008-119 (SB 4) requires medical care providers to report to the Division of Public Health (Division) on patients' self-reported race and ethnicity data in their reports to the Division. The act also adds race and ethnicity data to the data elements already included in the Medical Care Data Act's definition of "patient data." The Medical Care Data Act requires hospitals and freestanding ambulatory surgical facilities to report patient data to a Statewide data processor within 60 days of the close of each calendar quarter for each patient that was discharged or died that quarter.

This act becomes effective January 1, 2010. (BP)

Expand Definition of Home Care Services

S.L. 2008-127 (HB 964). See **Senior Citizens**.

Smoke-Free Motor Fleet

S.L. 2008-149 (SB 1681) amends the General Statutes to prohibit smoking inside State-controlled (owned, leased or otherwise controlled) passenger-carrying vehicles assigned to State employees or agencies or institutions for official State business. The act requires that "smoking is prohibited" signs be placed in all State vehicles unless used for undercover law enforcement operations.

The act allows local governments to restrict smoking in passenger-carrying vehicles controlled by local governments and assigned to local government employees, agencies, institutions, or facilities for official local government business.

This act becomes effective January 1, 2009. (BP)

Anatomical Gifts

S.L. 2008-153 (SB 1651) makes conforming changes to the Anatomical Gift Act to ensure consistency of its provisions, clarifies search and notification of donor status provisions of the act (including restrictions on time and scope of allowable searches and on use of documents located during searches), and lowers the age of consent for donating blood from 17 to 16 years of age.

This act became effective August 2, 2008. (BP)

Hospital Report Child Injuries

S.L. 2008-179 (HB 2338) adds a new section to existing reporting requirements to direct treating physicians or facility directors, administrators or their designees to report to law enforcement agencies any cases involving recurrent illness or serious physical injury to any child under the age of 18 years old where the illness or injury appears, in the physician's professional judgment, to be the result of non-accidental trauma. This requirement to report recurrent illness or physical injury to law enforcement is in addition to the existing requirement to report the same to the director of the county department of social services.

This act becomes effective December 1, 2008. (BP)

Mental Health, Developmental Disabilities, and Substance Abuse Services

Mental Health, Developmental Disability, and Substance Abuse Services System Reform

S.L. 2008-107, Sec. 10.15 (HB 2436, Sec. 10.15) makes the following changes to the system of mental health, developmental disabilities, and substance abuse services reform within the State of North Carolina:

Crisis Services

- Provides \$5,755,000 to Local Management Entities (LMEs) to support 30 mobile crisis teams.
- Provides \$8,121,644 to be allocated to purchase local inpatient psychiatric beds or bed days, and that these beds/bed days must be distributed across the State according to need as determined by the Department of Health and Human Services (Department). The provision specifies that these funds cannot be used to supplant other funds for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Pilot funds, and directs the Department to report to the General Assembly on beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) using funds appropriated under this subsection.
- Provides \$6,113,947 to support 30 psychiatrist and related support staff for walk in crisis and immediate psychiatric care. Of these funds \$1,650,000 must be used for telepsychiatry equipment.

Developmental Disabilities

- Directs the Department to allocate \$1,876,243 to support six crisis teams distributed across the State for the START crisis model for developmental disability services. The START model serves people with developmental disabilities, mental illness, or behavioral difficulties and emphasizes that the individual's needs and wishes drive all services and supports.
- Provides \$1,080,992 of appropriated funds must be used for ongoing support of respite beds for individuals with developmental disabilities.
- Directs the Department to implement the tiered Community Alternative Program for Mental Retardation and Developmental Disabilities (CAP-MR/DD) waiver program with four tiers as follows: (i) up to \$17,500; (ii) between \$17,501 and \$45,000; (iii) between \$45,001 and \$75,000; and (iv) between \$75,001 and \$100,000. The provision authorizes the Department to review on a case-by-case basis tier funding exceeding \$100,000.
- Directs the Department to implement a plan to bring Piedmont Behavioral Health (PBH) CAP-MR/DD slots to the Statewide average by transferring 1% of the funds for turnover slots each year.
- Directs the North Carolina Institute of Medicine to study and report by March 1, 2009, the barriers to and best practices in successful transitions for persons with developmental disabilities from one life setting to the next.
- Directs the Department to assist LMEs in using 5% of specific funds to help successfully transition individuals from developmental disability centers into the community. The provision directs the Department to report on the progress of this provision by March 1, 2009.

Housing Options for Persons with Disabilities

- Provides independent and supportive living apartments for persons with disabilities constructed with funds appropriated in this act must be affordable to persons with incomes at the Supplemental Security Income level.
- Directs the Department to review State County Special Assistant rules and rates to develop an appropriate rate for special care units for persons with a mental health disability, including Traumatic Brain Injury, and report by January 1, 2009.

Local Management Entity Administration

- Directs the Department to distribute to non-single stream LMEs at least one/twelfth of the LMEs continuation allocation for service dollars at the beginning of the fiscal year and to subtract that amount from the LMEs total reimbursements for the year.
- Directs the Department to encourage the conversion of non-single stream LMEs into single stream LMEs and to develop prompt pay guidelines as part of the requirements of being designated as single stream and standards for removal of that designation.
- Directs the Department to develop a plan to return service authorization, utilization review, and utilization management functions to LMEs and report on the plan's development by February 1, 2009. By July 1, 2009, these functions must be returned to as many LMEs necessary to represent 30% of the State's population. The section requires for LMEs to provide these functions they must be nationally accredited and meet all requirements of the existing vendor contract. The Department must not contract or otherwise obligate the State with an outside vendor for these functions beyond September 30, 2009. The provision authorizes the Department to develop a plan to return authorization for CAP-MR/DD slots to the LMEs.
- Directs the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to study and report by March 1, 2009, on the use of Medicaid waivers for all LMEs and to recommend other strategies that would increase LME flexibility, to provide case management assessments and to have more control over provider networks. The Piedmont Behavioral Health LME is deemed a demonstration model.
- Provides that the Secretary must not take any action prior to January 1, 2010, that would result in a merger or consolidation of LMEs, including establishing consortia or regional arrangements. This does not include LMEs that did not meet catchment area requirements as of January 1, 2008, (Foothills, Johnston) or the proposed administration service agreement under development as of March 1, 2008 (Guilford, Smoky Mountain, Mecklenburg).
- Amends the General Statutes relating to the Secretary's authority to remove or designate to another LME the primary functions of an LME. The provision requires an LME to fail to achieve a satisfactory outcome on any critical performance measures on three consecutive months, but reduces (from six to three months) the amount of time technical assistance must be provided by the Secretary. The provision defines minimally adequate services as a level of service of generally accepted professional standards and principles required for compliance with all laws, rules, regulations, and policies of the State and federal government.

MH/DD/SA Services

- Directs the Department to allocate \$8 million to support LMEs in establishing regionally-purchased, locally-hosted substance abuse services. LMEs must report to the Department on the use of these funds.
- Directs the Department to simplify the current State Integrated Payment and Reporting System (IPRS) and to work with LMEs to develop billing codes that currently do not exist.
- Directs the Department to consult with LMEs and service providers to determine why there have been under and over expenditures of State service dollars by LMEs. The Department must report on its activities relating to this provision by January 1, 2009.

- Directs the Department to perform a service gap analysis of the Mental Health, Developmental Disabilities, and Substance Abuse Services system and report by January 1, 2010. The provision directs the Department to involve LMEs and not to contract with an independent entity to perform the analysis.
- Directs the Department to include veterans and their families as target populations within the Mental Health, Developmental Disabilities, and Substance Abuse Services system.
- Directs the Department to develop a service authorization process that requires a comprehensive clinical assessment to be completed by a licensed clinician prior to delivery of non-crisis related services. Licensed professionals must indicate on medical orders whether the professional has had contact with the consumer and has reviewed the consumer's assessment. The Department must report to the proper occupational licensing board when a licensed professional fails to comply with this provision. The Department must report on this process by October 1, 2009, and must notify 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 15 days prior to implementation.

State Psychiatric Hospitals

- Provides for the transfer of patients from Dorothea Dix Hospital and John Umstead Hospital to Central Regional Hospital (CRH). The section requires that prior to transferring patients from Umstead Hospital, the Secretary will have provided a written report to the Governor indicating that CRH is ready to be operated in a manner that is safe and secure to both patients and staff. The section authorizes the Secretary to begin transferring patients from Dix Hospital on or after the date of the Umstead transfer if both of the following conditions are met:
 - The Secretary has determined that an inspection of CRH indicates no findings of noncompliance with conditions of participation from the Centers for Medicare and Medicaid Services.
 - The Secretary finds that CRH is in compliance with the Joint Commission standards for accreditation.
- Authorizes the Secretary to open and operate on a temporary basis up to 60 beds at the Central Regional Hospital Wake Unit on the Dorothea Dix Campus.
- Provides that funds appropriated for the Dorothea Dix Hospital overflow unit must be used to support the temporary opening and operation of the Central Regional Hospital Wake Unit on the Dorothea Dix Campus for three years, and directs the Office of State Budget and Management to establish the positions as time-limited positions for up to three years.

This section became effective July 1, 2008. (SP)

Improve and Strengthen Fiscal Oversight of Community Support Services - Providers

S.L. 2008-107, Sec. 10.15A ([HB 2436](#), Sec. 10.15A) makes multiple changes to improve and strengthen fiscal oversight of community support services by:

- Requiring the Division of Medical Assistance to submit revised definitions for the Medicaid billable services of community support – adults and community support – children/adolescents, with the revised definitions to focus on rehabilitative services and minimize over expenditures.
- Requiring the Division of Mental Health, Development Disabilities and Substance Abuse Services to develop a tiered rate structure for community support services,

reflecting the need for skills, education, or professional knowledge. After the tiers are developed, not less than 50% of community support services must be provided by qualified professionals.

- Allowing the Secretary of Health and Human Services to designate mental health, developmental disabilities, and substance abuse services that require national accreditation, and provide a framework for providers to achieve the national accreditation.
- Requiring the Department of Health and Human Services (Department) to implement a community support provider appeals process on a temporary basis for certain providers, to expire July 1, 2010. The appeal process is to be conducted on a timely basis by a hearings officer within the Department, and appeal of the final decision is to Wake County Superior Court. Any petition pending hearing at the Office of Administrative Hearings is to be transferred to the Department.
- Allowing the Department to suspend a Medicaid provider's endorsement pending a final agency decision.
- Granting an exemption from the contested case provisions of Chapter 150B of the General Statutes for the Department with respect to Medicaid community support providers and other community support providers appealing a decision by a local management entity.
- Requiring the Department to adopt guidelines for local management entities to follow to ensure only qualified providers are endorsed and are held accountable.

This section became effective July 1, 2008. (EC)

Improve and Strengthen Fiscal Oversight of Community Support Services - Recipients

S.L. 2008-107, Sec. 10.15A(h1) (HB 2436, Sec. 10.15A(h1)), as amended by S.L. 2008-118, Sec. 3.13 (HB 2438, Sec. 3.13), establishes a temporary appeals process for Medicaid applicants and recipients who have been denied, terminated, suspended, or reduced benefits. The Department of Health and Human Services (Department) must notify the recipient at least 30 days before the adverse determination is effective and must inform the recipient of the right to appeal the adverse determination. The recipient has 30 days to appeal and, if appealed, the appeal is a contested case to be heard by an administrative law judge.

Prior to the hearing before the administrative law judge, mediation must be offered to the recipient. If mediation is successful, the mediator must indicate this outcome to the administrative law judge. If mediation is unsuccessful, the administrative law judge must hear the case and make a determination. The burden of proof in the hearing is on the Department if the adverse determination being appealed is imposing a penalty or is reducing, terminating, or suspending a benefit previously granted. The final agency decision must be made within 90 days of the notice of the adverse determination to the recipient.

This section became effective July 1, 2008, and expires July 1, 2010. (EC)

All Deaths in State Facilities Reported

S.L. 2008-131 (SB 1770) directs the Secretary of Health and Human Services to report all deaths occurring in State facilities to the local medical examiner and expands the medical examiners' jurisdiction to include State facilities.

The act directs the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to study the current death reporting requirements and assess the need for any additional reporting requirements or modifications to existing rules. The Commission is required to report its findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by November 1, 2008.

This act became effective July 28, 2008. (SP)

Children with Disabilities in Residential Treatment Programs

S.L. 2008-174 ([HB 2306](#)). See **Education**.

National Instant Criminal Background Check System Reporting/Restoration

S.L. 2008-210 ([SB 2081](#)). See **Courts, Justice, and Corrections**.

Studies

Legislative Research Commission

Certificate of Need Process

S.L. 2008-181, Sec. 2.11 ([HB 2431](#), Sec. 2.11) authorizes the Legislative Research Commission (LRC) to study the current law relating to the process for issuing a Certificate of Need (CON) for new construction and expansion or renovation of existing health care facilities and determine if it adversely impacts the availability of local health care services. If the LRC undertakes this study, topic issues for consideration include:

- Impacts on rural and underserved areas based on past and future determinations.
- Legal requirements governing the Department of Health and Human Services determinations on CON applications.
- Trends on the basis of recent determinations.
- Modifications to mitigate the hardships to residents and health care facilities resulting from an adverse determination.

This section became effective August 4, 2008. (SP)

Smoking Prohibition in Foster Homes

S.L. 2008-181, Sec. 2.12 ([HB 2431](#), Sec. 2.12) authorizes the Legislative Research Commission to study prohibiting smoking in foster care homes and the prohibition's impact on the number of available foster care homes.

This section became effective August 4, 2008. (SP)

New/Independent Studies/Commissions

Joint Legislative Study Commission of State Guardianship Laws

S.L. 2008-181, Part XLIV ([HB 2431](#), Part XLIV) creates the Joint Legislative Study Commission on State Guardianship Laws to review North Carolina law pertaining to guardianship for minors and incompetents and its relationship to other pertinent laws, such as the health care power of attorney, the right to a natural death, and durable powers of attorney. Membership is comprised of 19 voting individuals, both members of the General Assembly and the private sector, and 10 nonvoting advisory individuals. The report is to the 2009 General Assembly prior to its convening.

This part became effective August 4, 2008. (EC)

Epilepsy Patients and Medication Interchange Study Commission

S.L. 2008-181, Part XLVII (HB 2431, Part XLVII), establishes the 21-member Epilepsy Patients and Medication Interchange Study Commission (Commission). The purpose of the Commission is to study issues involving the protection of epilepsy patients from medication interchange.

The Commission must report its findings and recommendations to the General Assembly and the Joint Legislative Health Care Oversight Committee on or before February 1, 2009, at which time the Commission terminates.

This part became effective August 4, 2008. (SB)

Referrals to Existing Commissions/Committees

Joint Legislative Health Care Oversight Committee

S.L. 2008-181, Part III (HB 2431, Part III) authorizes the Joint Legislative Health Care Oversight Committee to study the following topics and to report its findings, together with any recommended legislation, to the 2009 General Assembly on its convening:

- "Do Not Resuscitate" (DNR) orders issued by an attending physician in the absence of a declaration for natural death.
- Regulation of Dental Laboratories including the advisability of requiring dental laboratories to:
 - Have certified dental technicians on location.
 - Register with the State.
 - Maintain written documentation of point of origin of all materials included in a final restoration.
- The development of a coordinated Statewide electronic health information network to facilitate the integration of health information into health care systems.
- Issues related to bedding laws.
- Increasing the Medical Records Copy Fees.

This part became effective August 4, 2008. (SP)

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

S.L. 2008-181, Part X (HB 2431, Part X) authorizes the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services to study the involuntary commitment statutes and determine if the supervision requirements during the examination are adequate to protect the health and safety of the individual and others. The Committee may report its findings, together with any recommended legislation, to the 2009 General Assembly on its convening.

This part became effective August 4, 2008. (SP)

General Statutes Commission to Study the Uniform Emergency Volunteer Health Practitioners Act

S.L. 2008-181, Part XVIX (HB 2431, Part XVIX) directs the General Statutes Commission to study the Uniform Emergency Volunteer Health Practitioners Act in consultation with interested parties and report their recommendations to the General Assembly by February 1, 2009.

This part became effective August 4, 2008. (BP)

North Carolina Institute of Medicine to Study Issues Relating to Access to Health Care

S.L. 2008-181, Part XXXI (HB 2431, Part XXXI) directs the North Carolina Institute of Medicine (Institute) to convene a panel to study issues relating to access to appropriate and affordable health care for all North Carolinians. The act directs the Institute to report its recommendations to the Joint Legislative Health Care Oversight Committee, the House and Senate health appropriations committees, and the General Assembly no later than January 15, 2009, and requires that the recommendations address previous and current relevant Institute studies, and analyses of relevant federal initiatives and other states' successful efforts to improve access and affordability of health care.

This part became effective August 4, 2008. (BP)

Chapter 13

Insurance

Tim Hovis (TH), Shawn Parker (SP), Ben Popkin (BP)

Enacted Legislation

Rescue Squad Workers' Relief Fund

S.L. 2008-107, Sec. 29.9 (HB 2436, Sec. 29.9) provides additional funding to the North Carolina Association of Rescue and Emergency Medical Services (Association) for administration of the Rescue Squad Workers' Relief Fund (Fund) by increasing from 10% to 12% the portion that may be withheld by the Association from amounts credited to the Fund from its statutory share of the Division of Motor Vehicles' electronic inspection authorization fees.

This section becomes effective October 1, 2008. (BP)

Agent Licensing Fee Correction and Clarification

S.L. 2008-107, Sec. 29.10 (HB 2436, Sec. 29.10) decreases agent licensing fees from \$20 to \$10. It specifies that fees for individual appointments apply to each license, that fees are payable when billed, and that insurers are to be billed renewal fees annually and other fees at frequencies as set by the Commissioner of Insurance.

This section becomes effective January 1, 2009, and applies to fees billed on or after that date. (BP)

Insurance Changes

S.L. 2008-124 (HB 738) makes changes to various statutes governing automobile, property and casualty, health insurance, and insurance regulatory law.

Automobile Insurance. - Effective January 1, 2009, the act requires motor vehicle liability policies to include uninsured motorist coverage equal to the highest limits of bodily injury liability coverage and property damage liability coverage, and underinsured coverage equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The act provides that the named insured may purchase uninsured and underinsured bodily injury coverage with greater limits. However, uninsured and underinsured bodily injury coverage limits may not exceed \$1 million per person and \$1 million per accident. An insurer must notify the named insured of his or her right to purchase uninsured and underinsured bodily injury coverage with greater limits upon issuance and renewal of the policy. An insurer who fails to provide notice is subject to a civil penalty.

The act clarifies that the Division of Motor Vehicles is required to get a statement of eligible risk only from the owner of a nonfleet private passenger motor vehicle. Owners of commercial motor vehicles are not required to provide a statement of eligible risk.

Accident and Health Insurance. - The act authorizes non-stock insurance companies (non-profits) to organize as life insurance companies and as accident and health insurance companies. The act requires non-stock companies to meet higher minimum surplus requirements than stock companies.

The act requires health insurers and utilization review organizations (UROs) to maintain records for a period of five years, not three years as previously required. This reflects a 2007 change increasing the period for company examinations from three years to five years.

The act allows the use of automatic dialing and recorded message players by health insurers to make unsolicited calls that provide an insured or the insured's covered family member with information related to health care, preventive services, medication, or other covered benefits.

Effective October 1, 2008, the act makes the following changes to the law governing the North Carolina Health Insurance Risk Pool (Pool):

- Provides that Pool coverage must cease if a covered individual commits fraud or makes an intentional misrepresentation of material fact under the coverage terms.
- Provides that individuals eligible for coverage in the Pool under the federal Trade Adjustment Assistance Reform Act of 2002 are not subject to the pre-existing condition exclusion. This language is required for Pool coverage to qualify for the Health Care Tax Credit under federal law.
- Allows credit under the preexisting condition waiting period for periods of prior creditable coverage for individuals who are eligible for the Pool even if termination of that coverage was voluntary.

Employee Benefits. - Effective October 1, 2008, the act makes the following changes to the Professional Employer Organization (PEO) Act:

- Changes the deposit amount required of PEO license applicants to increase bond from \$100,000 to an amount equal to 5% of the prior year's total State wages, benefits, workers compensation premiums, and unemployment compensation contributions but not greater than \$500,000. The bond can be a greater amount in the discretion of the Commissioner.
- Requires all PEO health insurance plans to be fully insured by a licensed insurance company, a medical service corporation (Blue Cross and Blue Shield), or a health maintenance organization. This section would delete language authorizing PEOs to self-insure employee benefit plans. Existing licensees are required to comply with this section by October 1, 2009.

Other Insurance Changes. - The act makes the following changes to the law governing unauthorized insurers:

- Redefines "transacting insurance business."
- Provides that only admitted insurers may transact business in the State and increases the maximum monetary penalty from \$5,000 per offense to \$5,000 for the first offense and \$10,000 for each succeeding offense.
- Sets out factors to be considered when determining monetary penalties.

Commerce and Business. - The act amends the State's commerce and business laws to prohibit the advertising, offer, or providing of free insurance for damage, loss, or theft as an inducement to purchase, sale, or rent consumer goods. "Consumer goods" is defined to mean goods for personal family or household purposes other than automobiles or residences. "Free insurance" means insurance for which no identifiable charge or additional charge is made or for which an identifiable or additional charge is made that is less than the cost of the insurance to the seller, lessor, or other person, other than the insurer providing the insurance.

Building Code. - The act authorizes the Building Code Officials Qualification Board to contract with third parties for the development and administration of examinations, course development, and examination review.

Except as otherwise noted above, this act became effective July 28, 2008. (TH)

State Health Plan

S.L. 2008-168 ([HB 2443](#)) makes numerous changes to shift the State Health Plan for Teachers and State Employees (Plan) from the previous indemnity structure to the current Preferred Provider (PPO) structure and to provide the State Health Plan Executive Administrator with the flexibility necessary to implement a PPO-structured plan. The Plan remains a

comprehensive group health benefit plan with the same benefits, co-payments, co-insurance, and deductibles that were in effect for the indemnity and PPO options on July 1, 2008.

Substantive changes to the Plan include:

- Clarifies that oversight of the Executive Administrator, Board of Trustees, Claims Processor, and the State Health Plan is performed by an oversight team made up of employees authorized by the Legislative Services Commission and the Director of the Budget. The oversight team reports to the Committee on Employee Hospital and Medical Benefits.
- Repeals the provision directing the Executive Administrator to increase annually the Plan's annual deductible and aggregate maximum deductible by "not more than the percentage increase in the CPI-Medical Index" (United States Consumer Price Index for all Urban Consumers for Total Medical Care).
- Codifies existing Plan practice of complying with prompt pay requirements.
- Authorizes the Board of Trustees to make final decisions in cases contested under the Administrative Procedure Act and directs the Executive Administrator to execute the Board's decisions.
- Creates the State Health Plan Administrative Commission, authorizing the Commission to remove the Executive Director upon the advice of an executive committee of the Committee on Employee Hospital and Medical Benefits and to fill any vacancy in the office of Executive Director.
- Prohibits the Executive Director from changing the Plan's comprehensive health benefit coverage, co-payments, deductibles, out-of-pocket expenditures, and lifetime maximums "unless and until the proposed changes are directed to be made in an act of the General Assembly."
- Recodifies Definition and Eligibility provisions.
- Adds Enrollment provisions requiring that new employees and their dependents be given 30 days from the date of employment or coverage eligibility to enroll or decline enrollment. Those declining enrollment when first eligible may enroll on the first day of any month, but will be subject to a 12-month waiting period for coverage of pre-existing health conditions.
- Repeals previous prior approval provisions (which named specific services either as requiring or eligible for prior approval requirements) and enacts a new provision granting authority to the Executive Administrator and Board to establish procedures to require prior medical approval, to be implemented after consultation with the Committee on Employee Hospital and Medical Benefits.
- Imposes additional conditions for Plan coverage of treatments provided in clinical trials; requires that coverage for treatment provided as part of clinical trials be provided for trials involving treatment of life-threatening medical conditions only, utilizing a treatment that is clearly superior to available non-investigational treatments, and has clinical and preclinical data showing its superiority.
- Revises provisions for chemical dependency and mental health benefits to reference appropriate licensure and certifications of providers authorized to provide care and to allow certain certified professionals to provide treatment when working under the direct supervision of licensed physicians.
- Authorizes the Executive Administrator and Board to work with the Centers for Medicare and Medicaid Services and the Committee on Employee Hospital and Medical Benefits to offer an optional Medicare Advantage plan to Medicare eligible Plan members.
- Enacts new provisions to allow for implementation of cost-saving initiatives (coverage of over-the-counter medications) and incentive programs (incentives to encourage healthy behavior and lifestyle changes). Prior to implementation of these programs, the Executive Director and Board must conduct analyses and

submit proposed programs and policies to the Committee on Employee Hospital and Medical Benefits for review.
This act became effective July 1, 2008. (BP)

Studies

New/Independent Studies/Commissions

North Carolina Insurance Underwriting Association, the North Carolina Joint Underwriting Association, and the North Carolina Rate Bureau Study the Ability of the North Carolina Insurance Underwriting Association to Respond Financially to a Significant Hurricane in this State

S.L. 2008-181, Part XXXII (HB 2431, Part XXXII) directs the President Pro Tempore of the Senate and the Speaker of the House of Representatives to appoint a committee to study the potential impact of Category 3, 4, and 5 hurricanes on the State's insurance market. The Committee must include a representative from each of the following: (1) the Department of Insurance; (2) the North Carolina Insurance Underwriting Association (NCIUA); (3) the North Carolina Joint Underwriting Association (NCJUA); and (4) the North Carolina Rate Bureau. The Committee also must include at least one member representing a national insurer, one member representing a regional insurer, and one member representing a domestic insurer.

The study must consider the impact of Category 3, 4, and 5 hurricanes on the insurance market including the ability of the NCIUA and the NCJUA to pay claims and purchase reinsurance. Other issues to be studied include potential financing options, possible assessments on the private market, and options for recoupment of private market assessments. Residual market experience and assessment structures in other states, land use issues, and mitigation issues also must be considered. Any other factors deemed relevant may be considered by the Committee.

The Committee must report findings and recommendations to the General Assembly on or before February 1, 2009.

This part became effective August 4, 2008. (TH)

Chapter 14
Labor and Employment

Karen Cochrane-Brown (KCB), Bill Gilkeson (BG),
Theresa Matula (TM), Howard Alan Pell (HAP)

Enacted Legislation

General Labor and Employment

Unemployment Insurance/Advance Payments

S.L. 2008-157 (SB 741) deletes provisions of the current law authorizing exemptions from payments to the Unemployment Insurance Fund in the full amounts required of other employers for certain nonprofit employers and Indian tribes that elect to switch from a contribution to a reimbursement method of payment.

For nonprofit employers who switch from a contributing to reimbursing status, the act adds language allowing payments to be secured by the posting of a surety bond or by obtaining an irrevocable letter of credit.

The act also deletes provisions allowing annual refunds of excess amounts in the accounts of reimbursing nonprofit employers and Indian tribes and of all credit balances in an employer's account, if an employer terminates coverage or switches from a reimbursement to a contribution method of payment. The deletion of these refunds is done in response to a request from the United States Department of Labor, which has indicated that such refunds are in violation of the withdrawal standard federal law sets for state unemployment compensation funds.

This act becomes effective January 1, 2010. (BG)

Protection against Discrimination or Retaliation Based upon Exercise of Rights/Agricultural Pesticide Exposure

S.L. 2008-212, Sec. 1 (SB 847, Sec. 1) amends the protections of the State's non-discrimination and anti-retaliation law to include agricultural workers who exercise employee rights under the pesticide regulatory statutes. The act also requires the Pesticide Board to adopt rules to implement the recommendations of the Governor's Task Force on Preventing Agricultural Pesticide Exposure, which (i) require recording of the specific time of day when each pesticide application was completed, and (ii) extend from 30 days to two years the retention period for pesticide application records for all pesticides covered under the Worker Protection Standards for Agricultural Pesticides.

This section became effective August 11, 2008. (HAP)

Governmental Employment

Disapprove State Personnel Commission Rules

S.L. 2008-82 (HB 2748) disapproves rules adopted by the State Personnel Commission relating to temporary employment services and the appointment of temporary employees and prevents those rules from becoming effective. The act directs the Office of State Personnel to conduct a thorough analysis of the use of nonpermanent employees by State agencies and to

develop recommendations for policies regarding the definition, selection, appointment, and duration of the various categories of nonpermanent employment. The recommendations must include a prohibition against any new temporary employment services, other than those in existence on the effective date of this act, and the Office of State Personnel must submit its findings and any legislative proposals to the General Assembly on or before December 31, 2008. To the extent it accepts the recommendations of the Office of State Personnel, the State Personnel Commission is directed to adopt rules in accordance with the Administrative Procedure Act to implement a plan for nonpermanent employment in State government.

This act became effective July 11, 2008. (KCB)

City Firefighters/Overtime Pay

S.L. 2008-151 ([SB 963](#)). See **Local Government**.

Extend Fire and Rescue Death Benefits

S.L. 2008-163 ([HB 1563](#)) amends the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act. The act extends death benefits to fire and rescue squad instructors who are otherwise eligible for these benefits, but not currently covered, while conducting fire and rescue training outside their own departments.

This act became effective June 1, 2008, and applies to claims arising from injuries occurring on or after that date and to death benefits awarded on or after that date. (KCB)

Some Personal Leave Time/No Penalty

S.L. 2008-209 ([HB 15](#)). See **Education**.

Studies

New/Independent Studies/Commissions

Poverty Reduction and Economic Recovery Legislative Study Commission

S.L. 2008-181, Part XLI ([HB 2431](#), Part XLI) creates the Poverty Reduction and Economic Recovery Legislative Study Commission. The Commission consists of 20 voting members as follows: 10 members appointed by the Speaker, to include 7 members of the House of Representatives, and 3 members of the general public with expertise in the fields of business and economic development, public health, and affordable housing; and 10 members appointed by the President Pro Tempore, to include 7 members of the Senate, and 3 members with experience in the fields of education, public safety, and child welfare.

The Commission also must include, as nonvoting, ex-officio members, the following persons or their designees: the Commissioner of Labor; the Superintendent of Public Instruction; the Secretary of the Department of Health and Human Services; the Secretary of the Department of Transportation; the Secretary of the Department of Juvenile Justice and Delinquency; the Secretary of the Department of Commerce; and the Chairman of the Employment Security Commission.

The Commission must:

- Study and develop a coordinated and integrated approach to poverty reduction and economic recovery.

- Examine poverty Statewide, with an emphasis on the following counties: Alleghany, Avery, Bladen, Columbus, Edgecombe, Graham, Halifax, Hoke, Northampton, Robeson, Scotland, Tyrrell, Warren, Watauga, and Yancey.
- Examine other states' evidence-based intervention methods and best practices.
- Study any other pertinent matter.

The Commission's final report is due by the 2010 Regular Session of the 2009 General Assembly, but it may submit interim reports. The final report must include the results of the Commission's review and specific legislative recommendations.

This part became effective August 4, 2008. (HAP)

Referrals to Departments, Agencies, Etc.

Licensed Ferry Personnel/Classification Study/Report

S.L. 2008-107, Sec 26.12C ([HB 2436](#), Sec 26.12C) requires the Office of State Personnel to conduct a classification study of licensed ferry personnel within the Ferry Division of the Department of Transportation. The purpose of the study is to ensure that in the interests of public safety and efficiency, the Division retains and recruits the most qualified personnel. The Office of State Personnel must report to the Senate and House Appropriations Committees on the findings of the study, any related actions of the State Personnel Commission, and any related salary increases or adjustments based on the study

This section became effective July 1, 2008. (TM)

Office of State Personnel to Perform Labor Market Analysis of Certain Positions

S.L. 2008-107, Sec. 26.15 ([HB 2436](#), Sec. 26.15) requires the Office of State Personnel (OSP) to conduct the labor market analyses and studies outlined below.

- A labor market analysis of the Administrative Support positions in the Department of Transportation to determine whether current employees are compensated appropriately relative to market rates for similar positions. If appropriate, the OSP must recommend to the State Personnel Commission a Salary Range Revision or establishment of a Special Minimum Rate. The OSP is required to report findings and actions of the State Personnel Commission to the House and Senate Appropriations Committees no later than two weeks after the convening of the 2009 General Assembly.
- A labor market analysis of the Information Technology and Law Enforcement positions in the Department of Transportation to determine whether current employees are compensated appropriately relative to labor market rates for similar positions. The study must be based on the employees' competency assessment made at the time these positions were Career Banded, or on the employees' date of hire, if later. The study is not to include an analysis of "career progression adjustments" that could be made under current policy due to additional skills/competencies demonstrated by an employee subsequent to his or her initial competency assessment. The OSP is required to report findings to the House and Senate Appropriations Committees no later than two weeks after the convening of the 2009 General Assembly.
- An analysis of the proposal by the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to increase salaries of the following based on the establishment, and the employees' demonstration, of defined skill and competency sets:

- Health Care Technicians.
- Developmental Disability Trainers.
- Youth Program Assistants.

The analysis must determine whether the Division's goals can be accomplished through current State Personnel Policy regulating "Reallocations" and if possible, the OSP must advise the Division of Mental Health and assist them by processing any reallocation requests in a timely manner. The OSP is required to report findings and actions to the House and Senate Appropriations Committees no later than two weeks after the convening of the 2009 General Assembly.

- A classification study of the Statewide Information Technology Procurement positions within the Office of Information Technology. The goal is to ensure that the Office of Information Technology retains and recruits the most qualified personnel possessing the necessary knowledge, skills, and abilities required for the procurement of information technology systems. By the convening of the 2009 General Assembly, the OSP is required to report findings, related Personnel Commission actions, and any related salary increases or adjustments based on the study, to the House and Senate Appropriations Committees and to the Joint Committee on Information Technology

This section became effective July 1, 2008. (TM)

Chapter 15

Local Government

Erika Churchill (EC), Judy Collier (JC), Sara Kamprath (SK), Joe Moore (JHM),
Giles S. Perry (GSP), Barbara Riley (BR), Steve Rose (SR)

Enacted Legislation

Joint Municipal Assistance Agency Contracts

S.L. 2008-38 (HB 1679) permits joint municipal assistance agencies to make and execute contracts for periods of time greater than three years. A joint municipal assistance agency is a public body that has the authority to provide assistance to municipalities in the contraction, ownership, maintenance, expansion, and operation of their electric systems. Previously, the right to make and execute contracts was restricted to a period of time not to exceed three years.

This act became effective July 1, 2008. (EC)

Local Park and Recreation Participant Records

S.L. 2008-126 (SB 212) creates an exception to the public records law so that identifying information of minors participating in local park and recreation programs will not be publicly available.

Numerous records of State and local governments are public records and may be copied by the public at no or minimal cost. This act creates an exception so that identifying information of minors participating in county or municipal park and recreation programs will not be considered public records. The county, municipality, and zip code of a participant is public with all identifying information redacted. The act specifically provides that the identifying information is not confidential information. Local governments do have the option of disclosing the information, but are not required to do so.

This act became effective July 28, 2008. (SR)

Cleanup of Abandoned Manufactured Homes

S.L. 2008-136 (HB 1134). See **Environment and Natural Resources**.

Breach/Construction Contract Accrual Date

S.L. 2008-139 (HB 1284). See **Civil Law and Procedure**.

Tax on Short-Term Heavy Equipment Rentals

S.L. 2008-144 (SB 1852). See **Finance**.

Smoke-Free Motor Fleet

S.L. 2008-149 (SB 1681). See **Health and Human Services**.

City Firefighters/Overtime Pay

S.L. 2008-151 ([SB 963](#)) attempts to mirror in State law the wage and hour law currently applicable to firefighters and fire department personnel under federal law and federal regulations. This act requires municipalities to pay full-time firefighters and other full-time fire department personnel overtime compensation if the fire personnel work more than 53 hours in a 7-day work period, or the equivalent ratio of up to 212 hours in a 28-day work period under State law as well as federal law. Overtime compensation is to be paid at the rate of one and one-half times the compensation for regular hours. Compensatory time at the rate of one and one-half times is permitted in lieu of monetary compensation. The North Carolina Department of Labor is authorized to enforce the provisions of this act if federal firefighter overtime laws are no longer subject to enforcement under the federal law. This law applies only to full-time firefighters and other full-time paid members of a fire department of a municipality that employs five or more employees in fire protection during the workweek.

The act provides that it becomes effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable. (GSP)

Future Conveyances/Special Assessments

S.L. 2008-165 ([HB 1770](#)). See **Finance**.

Voluntary County Participation/Department of Transportation

S.L. 2008-180 ([HB 2314](#)). See **Transportation**.

Court Fee Exemption

S.L. 2008-193 ([SB 2056](#)). See **Courts, Justice, and Corrections**.

Prohibit Restricting Newspaper Distribution

S.L. 2008-223 ([SB 942](#)) provides that local governments may not prohibit engaging in the distribution of newspapers from the non-traveled portion of a street except when the distribution impedes the normal flow of traffic on the street.

This act became effective August 17, 2008. (BR)

Studies

Joint Legislative Study Commission on Municipal Annexation

S.L. 2008-181, Part XLVI ([HB 2431](#), Part XLVI) establishes the Joint Legislative Study Commission on Municipal Annexation to study municipal annexation in North Carolina. The Commission consists of 28 members: 12 members appointed by the President Pro Tempore of the Senate, 12 members appointed by the Speaker of the House of Representatives, 2 members representing the North Carolina League of Municipalities, and 2 members representing the North Carolina Association of County Commissioners appointed by the Speaker and the President Pro Tempore.

The Commission may examine the following issues:

- State law governing involuntary annexation, voluntary annexation by petition, and voluntary satellite annexation.
- Municipal compliance with current annexation procedural standards.
- Provision of services to persons in areas subject to annexation.
- Effect of the creation of an independent review procedure for annexation decisions.
- Current standards for judicial review and appeal of annexation decisions.
- Impact of the current annexation law on municipalities and State.
- Whether the annexation law should be amended.

The Commission must make a final report, including any proposed legislation, to the 2009 General Assembly upon its convening. The Commission terminates upon filing its final report or upon the convening of the 2009 General Assembly, whichever occurs first.

This part became effective July 1, 2008. (SK)

Chapter 16
Military, Veterans', and Indian Affairs

Theresa Matula (TM), Howard Alan Pell (HAP)

Enacted Legislation

Military and Veterans' Affairs

Student Loan Repayment for North Carolina National Guard Members

S.L. 2008-94 (HB 1304) amends current law providing tuition to North Carolina National Guard members so that any year-end funds not used for tuition assistance may be used to help members repay student loans. Funds may not be used to pay for courses from which the member withdrew or failed. Persons eligible to apply for loan repayment funds include:

- Members who are enrolled in business or trade school, private educational institutions, or State educational institutions, and have at least two years remaining on their service obligation.
- Members who were previously enrolled in school, and have a minimum obligation of two years from the time of application, or commit to extend for at least two additional years.

This act became effective July 1, 2008. (HAP)

State Support of Our Military Personnel

S.L. 2008-107, Sec. 6.8 (HB 2436, Sec. 6.8) acknowledges North Carolina's 770,000 veterans, 120,000 active duty military personnel, rich military heritage, and the State's military installations including: Camp Lejeune, Fort Bragg, Pope Air Force Base, Seymour Johnson Air Force Base, New River Marine Corps Air Station, United States Coast Guard Air Station, Elizabeth City, and Cherry Point Marine Corps Air Station. The section expresses the General Assembly's appreciation and support for North Carolinians, both living and deceased, who have served the United States through their service in the armed forces. This section lists the following initiatives for which the General Assembly provides funding and support:

- Defense and Security Technology Accelerator.
- Military Morale, Welfare, and Recreation Fund.
- "More at Four" for children of Deployed Military Personnel.
- Traumatic Brain Injury Services.
- Fayetteville Tech 3-D Technology Project.
- National Guard Pension Fund.
- National Guard Tuition Assistance Program.
- National Guard Armory Rehabilitations.
- Master Planning for Future Armory Needs.
- Land Buffers and Latrines for Camp Butner.
- Property Tax Homestead Exemption for Disabled Veterans.
- North Carolina State Veterans Park.
- Museum of the Marine.

This section became effective July 1, 2008. (TM)

Scholarships for Children of War Veterans

S.L. 2008-107, Sec. 19.2 (HB 2436, Sec. 19.2) amends the statute authorizing scholarship aid to children of war veterans at State educational institutions or private educational institutions. A provision is added to require that any scholarship for a State educational institution be reduced so that the sum of the scholarship and all other grants and scholarships received by the student does not exceed the cost of attendance at the institution where the student is enrolled. The section also clarifies that "State educational institution" is defined as any constituent institution of the University of North Carolina or any community college.

This section became effective July 1, 2008. (HAP)

Study Department of Administration Assistance to County Veterans Service Programs

S.L. 2008-107, Sec. 22.6 (HB 2436, Sec. 22.6). See **State Government**.

Property Tax Exclusion For Honorably Discharged Disabled Veterans and Their Surviving Spouses

S.L. 2008-107, Sec. 28.11 (HB 2436, Sec. 28.11). See **Finance**.

Deputy Adjutant General, North Carolina National Guard

S.L. 2008-162, Sec. 3 (HB 2432, Sec. 3) changes the authorized rank for the Deputy Adjutant General of the North Carolina National Guard from brigadier general to major general.

This section became effective August 3, 2008. (HAP)

Review the North Carolina National Guard Pension Fund

S.L. 2008-181, Part XLV (HB 2431, Part XLV) establishes the North Carolina National Guard Pension Fund Study Commission. The Commission has the following membership: five Senate members appointed by the President Pro Tempore; five House members appointed by the Speaker of the House; and one member representing the National Guard, recommended by the Governor and jointly appointed by the President Pro Tempore and the Speaker of the House. The Commission must consider, but is not limited to, the following issues:

- The actuarial condition of the Fund and measures that might be taken to ensure long-term solvency.
- Changes to the maximum and minimum monthly benefits paid from the Fund.
- Changes to the eligibility requirements, including the minimum age for receiving benefits and minimum number of years of creditable military service.

The Commission must report its findings and recommendations to the Joint Legislative Commission on Governmental Operations no later than March 1, 2009.

This section became effective August 4, 2008. (HAP)

Interstate Compact/Education of Military Children

S.L. 2008-185 (SB 1541). See **Education**.

Indian Affairs

Unemployment Insurance/Advance Payments by Indian Tribes

S.L. 2008-157 (SB 741). See **Labor and Employment**.

Chapter 17

Occupational Boards and Licensing

Cindy Avrette (CA), Judy Collier (JC), Trina Griffin (TG)

(For summaries of legislation related to non-occupational boards and commissions, see Chapter 22, **State Government**.)

Enacted Legislation

Disapprove Nursing Faculty Requirements Rule

S.L. 2008-14 ([SB 1662](#)) disapproves a North Carolina Board of Nursing rule on nursing faculty requirements. The disapproved rule required nursing faculty employed after December 31, 2014, and teaching in programs leading to initial licensure, to have either a master's degree or a nursing doctorate degree from an accredited institution.

This act became effective June 25, 2008. (JC)

Amend Substance Abuse Professionals Act

S.L. 2008-130 ([SB 2117](#)) makes the following substantive changes to the licensing and certification requirements of the North Carolina Substance Abuse Professional Practice Act:

- Eliminates the oral examination requirement for certification as either a "Certified Substance Abuse Counselor" or a "Licensed Clinical Addictions Specialist."
- Streamlines certification requirements for Certified Clinical supervisor (CCS) by allowing only Licensed Clinical Addictions Specialist (LCAS) counselors to make application for the CCS credential.
- Repeals the provision allowing a Certified Substance Abuse Counselor (CSAC) with a master's degree to seek the CCS credential without first obtaining a license.
- Eliminates the requirement that a CSAC applying to be a LCAS must have one year of postgraduate supervised substance abuse counseling experience, thereby shortening the application process by one year.

The act makes a number of technical and conforming changes to the laws regulating substance abuse professionals and makes technical changes to the statutes governing the North Carolina Substance Abuse Professional Practice Board (Board). The act allows current Board members who began serving a second consecutive four-year term as of September 1, 2005, the effective date of the North Carolina Substance Abuse Professional Practice Act, to continue to serve on the Board for an additional four-year term.

This act became effective July 28, 2008. (JC)

Amend Appointment Process for Auctioneers Commission

S.L. 2008-138 ([HB 1549](#)) provides that at least three of the Governor's appointees to the North Carolina Auctioneers Commission may be from nominations submitted by the Auctioneers Association of North Carolina.

This act became effective July 28, 2008. (JC)

Irrigation Contractors Licensure/Fees

S.L. 2008-177 ([HB 2353](#)) enacts a new chapter in the General Statutes to provide for the licensing and regulation of irrigation contractors. The act also provides for the appointment of two additional members to the North Carolina Appraisal Board, increasing its membership from seven to nine persons. The additional members will be appointed by the General Assembly.

The act prohibits any person from engaging in the practice of irrigation construction or contracting, using the designation "irrigation contractor," or advertising using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor by the North Carolina Irrigation Contractors' Licensing Board.

Exemptions. - The act provides exemptions from licensure for specified licensed or certified professionals including landscape architects, engineers, general contractors, public utility contractors, and certain wastewater contractors and plumbing contractors. The following persons or entities are also exempt from the licensing requirements:

- Any federal or State agency or any political subdivision performing irrigation construction or contracting work on public property.
- Any property owner who performs irrigation construction or contracting work on his or her own property.
- Any person performing irrigation construction or contracting work:
 - For temporary irrigation to establish vegetative cover for erosion control.
 - To control dust on commercial construction sites or mining operations.
 - For use in agricultural production, farming, or ranching, including land application of animal wastewater.
 - For use in commercial sod production.
 - For use in the commercial production of horticultural crops, including nursery and greenhouse operators.
- Any person performing irrigation construction or contracting work for a golf course.
- Any person maintaining or repairing an irrigation system installed prior to January 1, 2009 and owned by the homeowners association of a planned community and located within the planned community's common elements.

An exemption also applies to any irrigation construction or contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than \$2,500.

The North Carolina Irrigation Contractors' Licensing Board. - The act provides for the appointment of a nine-member Board to administer and enforce the provisions of law relating to irrigation contractors. The initial Board must be appointed on or before October 1, 2008 in the following manner:

- The Commissioner of Agriculture will appoint two members.
- The General Assembly will appoint four members, two upon the recommendation of the Speaker of the House of Representatives and two upon the recommendation of the President Pro Tempore of the Senate.
- The President of the University of North Carolina System will appoint one member from within the ranks of the land grant university community who is knowledgeable in irrigation methods and practices.
- The Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects will appoint one member who is a registered landscape architect.
- The Governor will appoint one public member.

The act specifies the powers and duties of the Board, including the authority to examine and determine the qualifications and fitness of applicants for licensure and to take disciplinary action for violations of the law. In addition to taking any actions permitted under this act, the Board may assess a civil penalty not to exceed \$2,000 for each violation. The Board must establish a schedule of civil penalties for violations of this act and rules adopted by the Board.

The Board is also authorized to adopt and publish a code of professional conduct and practice for all licensees.

Qualifications for licensure. - An applicant for licensure must meet all of the following qualifications:

- Must be at least 18 years of age.
- Must be of good moral character as determined by the Board.
- Must have at least three years of experience in irrigation construction or contracting or the educational equivalent. Two years of educational training in irrigation construction or contracting are equivalent to one year of experience.
- Must file and maintain with the Board a \$10,000 corporate surety bond or irrevocable letter of credit.
- Must pass an examination administered by the Board, which at a minimum must test the applicant's understanding of proper methods of irrigation construction and installation, efficiency of water use and conservation in the practice of irrigation construction and contracting, and basic business skills.

License without examination. - The act authorizes the Board to issue a license, without examination, to any person who is an irrigation contractor licensed, certified, or registered in another jurisdiction if the requirements of that jurisdiction are substantially equivalent to the requirements for licensure in North Carolina. The act waives the examination requirement for persons who have obtained Certified Irrigation Contractor (CIC) or Certified Irrigation Designer (CID) status through The Irrigation Association, certain registered landscape contractors and licensed plumbing contractors, and certain persons who can document 10 years in business as an irrigation contractor as of the date the act became effective. Eligible waiver candidates must document competency in the practice of irrigation contracting as determined by the Board, must meet all other requirement and qualifications for licensure, and must submit an application for licensure within 180 days of the effective date of the act.

License renewal and continuing education. - The act requires annual license renewal on or before December 31 of each year. As a condition of license renewal, each licensee must complete 10 continuing education units per year. Failure to obtain continuing education units will result in forfeiture of the license.

The provision of this act applying to the North Carolina Appraisal Board became effective August 4, 2008. The provision of this act establishing the North Carolina Irrigation Contractors' Licensing Board becomes effective October 1, 2008, and the provisions for the licensing and regulation of irrigation contractors become effective January 1, 2009. (JC)

Nursing Home Administrators Criminal History

S.L. 2008-183 (HB 2397) authorizes the North Carolina State Board of Examiners for Nursing Home Administrators (Board) to obtain criminal history record checks of applicants for licensure as nursing home administrators, as recommended by the North Carolina Study Commission on Aging. The Board must require a criminal history record check of all applicants, and refusal to consent to a record check may constitute grounds for denial of licensure. The act authorizes the Department of Justice to provide to the Board criminal histories of any applicant for licensure as a nursing home administrator.

This act becomes effective December 1, 2008. (JC)

Amend Massage and Bodywork Therapy Act

S.L. 2008-224 (SB 1314) amends the North Carolina Massage and Bodywork Therapy Practice Act by adding a new provision enumerating activities that do not constitute the practice of massage and bodywork therapy, including the diagnosis of illness or disease, and the use of

treatment for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law. The act expands the authority of the Massage and Bodywork Therapy Board (Board) to regulate massage and bodywork therapy schools and to authorize the Board to establish fees for licensing the schools. The act also authorizes criminal history record checks of applicants for licensure as massage and bodywork therapists.

North Carolina Board of Massage and Bodywork Therapy. – The act provides for staggered terms by extending the current terms of two members of the Board to a total of five years, ending on June 30 of the last year of each extended term. Upon completion of these five-year terms, all future members of the Board will serve three-year terms. The act makes additional changes regarding appointments to the Board and removal from the Board.

The act amends the powers and duties of the Board to include approval and regulation of massage and bodywork schools not otherwise exempt from the requirements of Board approval. The act makes it a Class 3 misdemeanor to operate a massage and bodywork therapy school without Board approval.

The Board may deny, suspend, revoke, or refuse to approve a massage and bodywork therapy school for specified reasons. The Board may also deny, suspend, revoke, or refuse to license a massage and bodywork therapist or applicant for specified reasons. The act authorizes the Board to establish a schedule of fees for applications for examination, certificates of licensure and renewal, approval of massage and bodywork therapy schools, and other services by the Board.

Requirements for licensure. - Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the specified qualifications. The act requires that each applicant provide fingerprints and consent to a criminal history record check by the North Carolina Department of Justice. Refusal to consent to a record check may constitute grounds for denial of licensure.

Licensure by endorsement. - The act requires the Board to maintain a list of all jurisdictions whose regulatory standards for the practice of massage and bodywork therapy have been determined by the Board to be substantially equivalent to or to exceed the requirements for licensure under this Article. The Board may issue a license to a practitioner who is duly licensed, certified, or registered as a massage and bodywork therapist under the laws of another jurisdiction if specified requirements are met. Under specified conditions, the Board may issue a license by endorsement to a practitioner from another state that does not license, certify, or register massage and bodywork therapists.

License renewal and continuing education. – The act specifies requirements for license renewal and continuing education. A license to practice under this act must be renewed every two years.

The provision of this act making it a Class 3 misdemeanor to operate a massage and bodywork therapy school without first being approved by the Board becomes effective December 1, 2008. The remainder of this act became effective August 17, 2008. (JC)

Chapter 18
Property, Trusts, and Estates

Karen Cochrane-Brown (KCB), Trina Griffin (TG), Denise Huntley (DH),
Walker Reagan (WR), Steve Rose (SR)

Enacted Legislation

Raise Ceiling on Personal Property Sale/Guardian

S.L. 2008-87 (HB 2390) increases the cumulative amount of personal property the guardian of an incompetent ward or a minor ward may sell, lease, or exchange without a court order, from \$1,500 over the duration of the guardianship estate to \$5,000 per accounting period.

This act becomes effective October 1, 2008. (WR)

Modify Estate Tax Law

S.L. 2008-107, Sec. 28.17 (HB 2436, Sec. 28.17). See **Finance**.

Increase Registration Fee for Deeds of Trust and Mortgages for Floodplain Map Use

S.L. 2008-107, Sec. 29.7 (HB 2436, Sec. 29.7) increases from \$12 to \$22 the fee for registering or filing the first page of any deed of trust or mortgage. The fee for additional pages remains \$3.00. The purpose of the fee increase is to provide additional funding for the State's Flood Plain Mapping Program (NCFMP) housed within the Emergency Management Division of the Department of Crime Control and Public Safety (Department). In 2007, the General Assembly directed the Department to identify funding sources for the program, since State and federal funding has been reduced or eliminated over the past two years and the Department does not receive any receipts from companies that charge mortgage lenders for flood map determinations.

The additional \$10 must be remitted, on a monthly basis, by the county finance officer to the Department and must be credited to the Floodplain Mapping Fund (Fund). The Fund, also established by this section, will be a special, nonreverting account used to support the NCFMP. The program develops Flood Insurance Rate Maps used to evaluate flood hazard potential for insurance rates.

This section becomes effective October 1, 2008, and applies to deeds of trust and mortgages registered or filed on or after that date. (TG)

Register of Deeds Changes

S.L. 2008-194, Sec. 7 (HB 545, Sec. 7) makes several changes, recommended by the North Carolina Association of Register of Deeds, to the statutes related to the verification, recordation, and indexing of documents presented to the register of deeds.

Rerecording Requirements. – The first change relates to the verification responsibilities of registers of deeds when rerecording an instrument. Current law requires a register of deeds to verify notary seals, signatures, and commission expiration dates on instruments prior to recording them, if the instrument so requires. The primary purpose of the verification requirement is to serve as a measure of the document's authenticity. There are certain circumstances under which a register is not required to verify an instrument. Under prior law, a register was not required to verify whether an original document being presented for rerecording had been changed or

altered. However, the statute was unclear, and some registers interpreted it as allowing the rerecording of a document that had been changed by someone other than the grantor after notarization. The wording of the statute seemed to suggest that an original document could be rerecorded with alterations. Moreover, this statute was also being used to rerecord certified copies that had been altered, despite the fact that a certified copy that has been altered is no longer a certified copy.

Subsection (a) of this section eliminates the apparent permission to rerecord documents that have been altered after they have been notarized. Effective October 1, 2008, a person presenting an original document for rerecording must mark the first page as a rerecording, which will serve as a representation that it is the same unaltered document as previously recorded. The register may rely on this representation and has no responsibility to check for alterations. Subsection (b) of this section makes similar changes to the statute governing the rerecording of certified copies.

Verification of Electronic Documents. – By enacting the Uniform Real Property Electronic Recording Act (URPERA) in 2005, the General Assembly paved the way for registers of deeds to record real estate documents in electronic format. However, the law did not specify the manner in which a register was required to verify these electronic documents. Subsection (a) of this section adds language to address this issue. The new provision does not require registers to accept electronic submissions, nor does it require registers who decide to accept electronic documents to accept them from anyone other than those who are authorized. A register's verification responsibilities with respect to electronic documents that require acknowledgment or proof are as follows:

- Check the submitter's authorization to record electronically.
- Check for compliance with any agreements with the register.
- Verify completion of the same notary elements as are checked with paper documents.
- Verify that trusted submitters have placed a statement on the document image about the submitter's identity and recording requirements compliance.

Minor Errors. – Subsection (c) of this section changes the available methods for recording a document with typographical or minor errors by eliminating the use of statements of explanation and authorizing the use of an affidavit to explain and show corrections. Under prior law, an original instrument with an obvious typographical or other minor error could be rerecorded so long as the changes were set out on the face of the instrument, the changes were initialed by the grantor or drafting attorney, and a "statement of explanation" was attached. In response to concerns from registers about the practical application of this statute, subsection (c) of this section modifies the requirements related to minor errors. Effective October 1, 2008, any person may submit an affidavit of correction to make a record of typographical or minor errors. The affidavit may include any exhibits to explain or show the correction, including a marked-up copy of the corrected document. Registers will verify the notary certificate in the same manner as with any other affidavit. If an affidavit is conspicuously identified as a "corrective" or "scrivener's" affidavit in its title, the register is required to index the affiant's name, the names of the original parties to the document, and the recording information for the document being described.

Indexing Changes. – Subsections (d) and (e) make changes to the indexing statutes. Adherence to the indexing requirements is critical to the validity of an instrument for purposes of securing the rights of purchasers and creditors. However, the prior statutory language did not provide registers with clear guidance about what constitutes reasonable indexing. A strict interpretation of the law seemed to suggest that if a document was not indexed according to all applicable rules, it was not registered at all. North Carolina courts have not taken this strict approach. Rather, they have held that indexing is sufficient if a reasonably careful and prudent examiner would find the document in the index, even if the indexing does not technically comply with all the indexing rules. The language in this subsection adopts current judicial interpretation. These subsections make other clarifying changes to address inconsistencies in the statutes that have arisen over the years as the result of changes to parts of the statutes without

corresponding changes to related statutes. Subsection (e) also reflects that, as of July 1, 2008, registers are no longer required to maintain personal property indexes for UCC filings. It also repeals the Class 1 misdemeanor penalty for violations of the indexing statute.

The repeal of G.S. 161-22(c) relating to the indexing of UCC filings became effective July 1, 2008. The changes relating to rerecording and the verification of electronic documents become effective October 1, 2008. The remainder of this section became effective on August 8, 2008, when the act became law. (TG)

Require Carbon Monoxide Detectors

S.L. 2008-219 (SB 1924) amends the Landlord-Tenant law to require a landlord to provide at least one operable carbon monoxide detector per rental unit per level in dwelling units having a fossil-fuel burning heater or appliance, fireplace, or an attached garage. The act also authorizes the Building Code Council to adopt provisions requiring the installation of carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace, or an attached garage.

The required carbon monoxide detector may be either battery-operated or electrical, must have national testing laboratory approval, and must comply with the manufacturer's installation standards. The act also provides that the requirements, obligations, penalties, and remedies for landlords and tenants for carbon monoxide detectors are the same as currently required for smoke detectors. The act prohibits a tenant from deliberately or negligently destroying, defacing, damaging, or removing any part of the carbon monoxide detector. Any operable carbon monoxide detector installed before January 1, 2010, will be deemed to be in compliance with this law. The Building Code Council also must study the needs and benefits of carbon monoxide detectors and report its findings to the General Assembly on or before July 1, 2009.

Sections of the act requiring carbon monoxide detectors in certain rental properties become effective January 1, 2010, and apply to residential rental agreements in effect on and after that date. The Building Code Council's authority to add carbon monoxide detectors to the State Building Code and to study the needs and benefits of carbon monoxide detectors became effective August 16, 2008. (DH)

Studies

Partition Sales Study Committee

S.L. 2008-181, Part XLII (HB 2431, Part XLII) creates the Partition Sales Study Committee to address the issue of the impact of the partition sale procedures on the economic use and loss of heir property and farmland by heirs in North Carolina. The Committee consists of 18 members, with 9 each appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Committee must study the laws and procedures concerning partition sales in North Carolina and how these laws affect landowners in the State, examining both the effectiveness and equity of the current law, and exploring potential alternatives. Specifically, the Committee must:

- Review information about partition sales and examine current trends in partition sales in the State, especially related to sales initiated by strangers in interest to heirs or related co-tenants.
- Analyze research and information from North Carolina and other states and jurisdictions regarding the effect of partition laws on desired land retention and economic development.
- Analyze information concerning the comparative frequency of partition sales vs. partition-in-kind in North Carolina.

- Identify and assess alternative partition sales laws from other states.
- Explore how best to balance competing interests of the tenants in common in the partition sales context.
- Identify and consult with academics who have studied partition sales nationally to determine their recommendations concerning best practices in partition proceedings.
- Identify current barriers to the adoption of best practices recommendations and alternative laws adopted by other states, and explore potential options to address these barriers.
- Prepare a report with a statement of the issues and a summary of the research, including the Committee's recommendations concerning any needed improvements and draft legislation to address any inequities presented by partition sales in North Carolina.

The Committee must submit a final report of the results of its study, including any legislative recommendations, to the 2009 General Assembly no later than March 1, 2009. The Committee terminates on March 1, 2009, or upon the filing of its final report, whichever occurs first.

This part became effective August 4, 2008. (SR)

Joint Resolutions

Adjournment Sine Die of the 2008 Extra Session

Res. 2008-1 Extra Session (SJR 2).

Honor Korean Veterans

Res. 2008-2 (SJR 1580).

General Assembly Convenes In Greensboro

Res. 2008-3 (SJR 1578).

**University of North Carolina Library Sciences 75th
Anniversary**

Res. 2008-4 (HJR 249).

Person High School Volleyball Champs

Res. 2008-5 (HJR 2263).

Haywood County Bicentennial

Res. 2008-6 (HJR 2274).

Honor Greensboro's Bicentennial

Res. 2008-7 (HJR 2478).

Honor Mount Olive Baseball Team

Res. 2008-8 (HJR 2791).

Honor 1132nd Military Police Company

Res. 2008-9 (HJR 2793).

Appalachian State University Football Championship

Res. 2008-10 ([HJR 2079](#)).

Honor C. E. Foy

Res. 2008-11 ([HJR 2172](#)).

Barbecue Presbyterian Church 250th Anniversary

Res. 2008-12 ([HJR 2125](#)).

State Board of Community Colleges Vacancy Election

Res. 2008-13 ([SJR 1996](#)).

Honor Plymouth High School Football Champions

Res. 2008-14 ([HJR 2790](#)).

Civil Air Patrol Anniversary

Res. 2008-15 ([SJR 2161](#)).

Public School Integration 50th Anniversary

Res. 2008-16 ([HJR 2794](#)).

Honor Israel's 60th Anniversary

Res. 2008-17 ([HJR 2727](#)).

Honor Jo Graham Foster

Res. 2008-18 ([HJR 2057](#)).

Honor Adam Marion

Res. 2008-19 ([HJR 2799](#)).

Honor Jim Richardson

Res. 2008-20 ([SJR 101](#)).

Honor Louise Brennan

Res. 2008-21 ([HJR 2797](#)).

Everybody's Day 100th Anniversary

Res. 2008-22 ([HJR 2796](#)).

Honor Clayton Kuhles

Res. 2008-23 ([HJR 2798](#)).

Honor Frank Capra, Jr.

Res. 2008-24 ([HJR 2774](#)).

Honor James Speed

Res. 2008-25 ([SJR 2168](#)).

Honor Benny Parsons

Res. 2008-26 ([HJR 161](#)).

Honor Reidsville Football Team

Res. 2008-27 ([HJR 2075](#)).

Honor Ed O'Herron, Jr.

Res. 2008-28 ([SJR 2171](#)).

Honor Dr. John McCain

Res. 2008-29 ([HJR 2801](#)).

Confirm David McCoy as State Controller

Res. 2008-30 ([SJR 1634](#)).

Sine Die Adjournment

Res. 2008-31 ([SJR 2172](#)).

Chapter 20 Retirement

Karen Cochran-Brown (KCB), Theresa Matula (TM)

Enacted Legislation

Provide Cost-of-Living Increases for Retirees of the Teachers' and State Employees' Retirement System, the Judicial Retirement System, and the Legislative Retirement System

S.L. 2008-107, Sec. 26.23 (HB 2436, Sec. 26.23) grants a 2.2% cost of living increase to retirees of the Teachers' and State Employees' Retirement System, the Judicial Retirement System, and the Legislative Retirement System.

This section became effective July 1, 2008. (TM)

Include the Director of the Office of Indigent Defense Services as a Member of the Consolidated Judicial Retirement System

S.L. 2008-107, Sec. 26.24 (HB 2436, Sec. 26.24) amends the law governing the Consolidated Judicial Retirement System to add the Director of Indigent Defense Services to the list of positions eligible for membership in the System. The Director of Indigent Defense Services is currently a member of the Teachers' and State Employees' Retirement System. Beginning July 1, 2008, the creditable service of the current Director of Indigent Defense Services earned on and after July 1, 2004, will be transferred to the Consolidated Judicial Retirement System. The Director of Indigent Defense Services will be eligible to receive a benefit based on an accrual rate of 3.02% of the member's final average compensation multiplied by the number of years of creditable service. This is the rate that applies to district court judges, district attorneys, clerks of superior court, and public defenders.

This section became effective July 1, 2008. (KCB)

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

S.L. 2008-107, Sec. 26.25 (HB 2436, Sec. 26.25) increases the pension paid to a retired eligible fireman or eligible rescue squad worker from \$167 to \$170 per month. The section also makes a conforming change to increase, from \$167 to \$170 per month, the monthly benefit paid to members who become totally and permanently disabled in the line of duty.

This section became effective July 1, 2008. (TM)

Supplemental Retirement Board of Trustees/Investment Division Employees

S.L. 2008-132 (HB 2728) consolidates the Board of Trustees for the North Carolina Public Employee Deferred Compensation Plan and the Board of Trustees for the Supplemental Retirement Income Plan into the Supplemental Retirement Board of Trustees. The newly-created Board will consist of nine voting members, appointed as follows:

- Six individuals with experience in finance and investments, one of whom must be a State employee, appointed by the Governor.
- One individual appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives.
- One individual appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.
- The State Treasurer, ex officio member, who will serve as Chair.

In order to provide for staggering of the terms, the initial appointments by the General Assembly, and two of the Governor's initial appointments, are for one-year terms. The remaining initial appointments are for two-year terms. After these initial appointments, members serve for two-year terms. No member of the Board may serve more than three consecutive two-year terms. Members appointed by the Governor serve at the Governor's pleasure.

The act also provides for a transitional Board from July 1, 2008, to June 30, 2009. During this period, the North Carolina 401(k) Plan and the North Carolina Public Employee Deferred Compensation Plan will be administered by a transitional Board of Trustees. The transitional Board consists of nine members appointed as follows:

- Two members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the General Assembly.
- Two members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the General Assembly.
- Two members of the Board of Trustees of the North Carolina 401(k) Plan who serve by virtue of their appointment to the Board of Trustees of the Teachers' and State Employees' Retirement System by the Governor, to be determined by the Governor.
- Two members of the Board of Trustees of the North Carolina Deferred Compensation Plan appointed by the Governor, to be determined by the Governor.
- The State Treasurer, ex officio, who will serve as Chair.

Additionally, the act authorizes the State Treasurer to establish compensation, including bonuses, for the Chief Investment Officer and the Investment Directors. The bonuses must be based on compensation studies conducted by a nationally recognized firm specializing in public fund investment compensation and the Pension Plan performance. The act further specifies that salaries and other benefits must be apportioned from the investment program. The Treasurer is required to report annually to the Joint Legislative Commission on Governmental Operations on the bonuses paid.

The provisions establishing the consolidated board become effective July 1, 2009. The remainder of the act, including the transitional board and the compensation of employees in the Investment Division, became effective July 1, 2008. (TM)

Disclosure of Retired State and Local Employee Information to Certain Organizations

S.L. 2008-194, Sec. 11 (HB 545, Sec. 11) amends the laws governing the confidentiality of the personnel files of State employees, teachers, community college employees, and county and municipal employees. The act authorizes the Retirement System Division of the Department

of State Treasurer to disclose the name and mailing address of former employees to certain domiciled nonprofit organizations. In the case of State employees, teachers and community college employees, the organizations must represent at least 10,000 or more retired State, local, or public school employees. In the case of county and municipal employees, the organizations must represent at least 2,000 or more State, local, or public school employees.

This section became effective August 8, 2008. (KCB)

Chapter 21

Senior Citizens

Theresa Matula (TM), Shawn Parker (SP)

Enacted Legislation

Raise Ceiling on Personal Property Sale/Guardian

S.L. 2008-87 (HB 2390). See **Property, Trusts, and Estates**.

State County Special Assistance

S.L. 2008-107, Sec. 10.2 (HB 2436, Sec. 10.2) provides that effective January 1, 2009, the maximum monthly Special Assistance rate for residents in adult care home facilities is \$1,207 per month per resident, unless adjusted by the Department of Health and Human Services.

This section became effective July 1, 2008. (TM)

Expand Definition of Home Care Services

S.L. 2008-127 (HB 964) increases the annual license fee for home care agencies from \$350 to \$400. Additionally, it expands the definition of home care services to include the following:

- In-home companion, sitter, and respite care services provided to an individual.
- Homemaker services provided in combination with in-home companion, sitter, respite, or other home care services.

The act provides that as used within Part 3 of Chapter 131E, the term "sitter" does not include child care facilities licensed under Chapter 110 (Child Welfare); the term "respite care" does not include facilities or services licensed under Chapter 122C (Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985); and the terms "in-home companion, sitter, and respite care services" are not within the definition of home care services if they are certified by the Department of Health and Human Services as not providing hands-on care and administered on a voluntary basis.

The section of the act containing the fee increase becomes effective January 1, 2009. The section of the act that expands the definition of home care services becomes effective January 1, 2010. The remainder of the act became effective July 28, 2008. (SP)

Multiunit Assisted Housing Services Registration Fee

S.L. 2008-166 (HB 2409) requires multiunit assisted housing with services (MAHS) programs to register annually with the Division of Health Service Regulation, Department of Health and Human Services, and requires the Department to charge each MAHS program a nonrefundable annual registration fee of \$350. Under the act, any individual or corporation that establishes, conducts, manages, or operates a MAHS program that fails to register is guilty of a Class 3 misdemeanor and upon conviction is subject to a fine of \$50 for the first offense and not more than \$500 for each subsequent offense.

This act becomes effective January 1, 2010. (TM)

Nursing Home Administrators Criminal History Record Checks

S.L. 2008-183 ([HB 2397](#)). See **Occupational Boards and Licensing**.

Special Assistance/Income Disregard

S.L. 2008-184 ([SB 1796](#)) provides that the eligibility of Special Assistance residents living in an adult care home on and after July 1, 2009, must not be adversely affected due to Social Security, Supplemental Security Income (SSI), Veteran, and Railroad Retirement annual Cost of Living Adjustments (COLAs). The act applies only to cases where Special Assistance income eligibility is affected by Social Security, SSI, Veteran, and Railroad Retirement COLAs and is not intended to render a Special Assistance recipient eligible if all other eligibility requirements are not met. The act specifies that the maximum monthly rate for these residents must be the same for all other residents according to the provisions set forth in the current Operations Appropriations Act, as amended. The Department of Health and Human Services must apply for the approvals, if any, which are necessary to implement the policy change directed in this act.

This act became effective August 6, 2008.

Note: Also see the summary of S.L. 2008-161 ([HB 2410](#)) Special Assistance Income Disregard Study under the Studies heading of this Chapter. (TM)

Certified Retirement Community Program

S.L. 2008-188 ([SB 1627](#)). See **Commercial Law & Consumer Protection**.

Studies

Referrals to Existing Commissions/Committees

Study on the State's Readiness to Respond to Increasing Numbers of Older Adults Residing in North Carolina

S.L. 2008-181, Part IX ([HB 2431](#), Part IX) authorizes the North Carolina Study Commission on Aging to evaluate the State's readiness to respond to the increasing number of older adults residing in North Carolina. In conducting this study the Commission may:

- Identify information and resources to provide needs assessment, planning, and delivery of services and programs to current and future older adults.
- Oversee the design and implementation of a:
 - Consumer Needs, Assets, and Expectations Assessment.
 - State and Local Awareness and Preparedness Assessment.
 - Process to strengthen State and local planning.
- Identify and secure studies of related issues, such as retirement migration patterns, that impact the planning process for North Carolina's older adult population.

The Commission may report its findings with any recommended legislation to the 2009 Regular Session of the General Assembly upon its convening.

This part became effective August 4, 2008. (SP)

Referrals to Departments, Agencies, Etc.

Transportation of Individuals in Wheelchair Study

S.L. 2008-121 ([HB 93](#)). See **Transportation**.

Special Assistance Income Disregard Study

S.L. 2008-161 ([HB 2410](#)) directs the Division of Aging and Adult Services and the Division of Medical Assistance, within the Department of Health and Human Services, to study implementation of an income disregard policy for current State/County Special Assistance and Medicaid residents who are adversely impacted due to cost of living or other income increases. On or before October 1, 2009, the Divisions must report findings and recommendations to the Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House of Representatives Appropriations Subcommittee on Health and Human Services.

This act became effective August 3, 2008.

Note: Also see the summary of S.L. 2008-184 ([SB 1796](#)) Special Assistance/Income Disregard under the Enacted Legislation heading of this Chapter. (TM)

Study Issues Relating to Hearing Loss in Older Adults in North Carolina

S.L. 2008-181, Part XII ([HB 2431](#), Part XII) directs the Division of Services for the Deaf and Hard of Hearing to study the impact of hearing loss on North Carolina's older adult population. Specific items to be addressed include the availability of qualified professionals for diagnosis and treatment, access to hearing aid purchase assistance programs for low income individuals, development of an inventory of adaptive technologies, and an examination of resources and programs available in other states. The Department must present its findings to the North Carolina Study Commission on Aging no later than November 1, 2009.

This part became effective August 4, 2008. (SP)

Study the Feasibility of Operating a Licensed Adult Care Home in a Public Housing Facility

S.L. 2008-181, Part XIII ([HB 2431](#), Part XIII) directs the Division of Aging and Adult Services and the Division of Medical Assistance, within the Department of Health and Human Services, to study the feasibility and possible savings to the State of operating a licensed adult care home in a public housing facility. The study must determine the following:

- Whether this model is needed to complement the care options currently available to older adults in North Carolina.
- Whether this model is allowable under current State and federal laws and rules and, if not, what changes are needed.
- How State-County Special Assistance and federal public housing subsidies would work together and whether this could result in a reduced State-County Special Assistance rate for these types of entities and possible savings for the State.

On or before August 1, 2009, the Department must report 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 to the Study Commission on Aging.

This part became effective August 4, 2008. (TM)

Study Issues Relating to Respite Care

S.L. 2008-181, Part XIV (HB 2431, Part XIV) directs the Division of Aging and Adult Services to study the adequacy of service standards and funding for group respite services and directs the Division of Medical Assistance to study the feasibility of including respite services as part of the Medicaid State Plan. The Department must present findings and recommendations to the North Carolina Study Commission on Aging by November 1, 2009.

This part became effective August 4, 2008. (SP)

Chapter 22

State Government

Erika Churchill (EC), Karen Cochrane-Brown (KCB), Trina Griffin (TG), Tim Hovis (TH),
Denise Huntley (DH), Brad Krehely (BK), Howard Alan Pell (HAP),
Giles S. Perry (GSP), Walker Reagan (WR)

Enacted Legislation

Agencies and Departments

Improve Disaster Recovery and Business Continuity

S.L. 2008-107, Sec. 6.10 (HB 2436, Sec. 6.10) directs the State Chief Information Officer (CIO) to determine whether State agencies have made adequate preparations for backing up critical applications. Where backup is found to be insufficient to minimize disruptions in critical State services due to natural or man-made disasters, the State CIO, in conjunction with State agencies and the Office of State Budget and Management, must develop plans to utilize the Western Data Center for providing backup. By December 1, 2008, the State CIO must report to the Joint Legislative Committee on Information Technology on the number of critical State applications without adequate backup, the State agencies using those applications, and plans for providing adequate backup. This section does not apply to the General Assembly, the Judicial Department or The University of North Carolina and its constituent institutions.

This section became effective July 1, 2008. (BR)

Single Electronic Mail System

S.L. 2008-107, Sec. 6.14 (HB 2436, Sec. 6.14) requires the State Chief Information Officer to develop a detailed plan providing for the transition of all State agencies to a single Statewide electronic mail system by January 1, 2010. The plan is to be presented to the Joint Legislative Oversight Committee on Information Technology by November 1, 2008. After consultation with that Committee, the plan may be implemented. This section does not apply to the General Assembly, the Judicial Department or The University of North Carolina and its constituent institutions.

This section became effective July 1, 2008. (EC)

Sexual Assault and Rape Crisis Center Fund

S.L. 2008-107, Sec. 19.1 (HB 2436, Sec. 19.1) creates the Sexual Assault and Rape Crisis Center Fund. The fund is administered by the Department of Administration, North Carolina Council for Women, and is designed to be used for grants to centers for victims of sexual assault or rape crisis, and to the North Carolina Coalition Against Sexual Assault. The following are the eligibility criteria for centers seeking quarterly grants:

- Have been in operation on the preceding July 1, and continue to be in operation.
- Offer all of the following services:
 - A hotline.
 - Transportation services.
 - Community education programs.
 - Daytime services and call forwarding at night.
 - Fulfill other criteria established by the Department of Administration.

- A nonprofit or local government entity.
- A mission statement that clearly specifies that rape crisis services are provided.
- Act in support of rape or sexual assault victims by providing assistance to ensure victims' interests are represented in law enforcement and legal proceedings, and that support and referral services are provided in medical and community settings.

Funds are distributed in two shares: 35%, in equal shares, to the North Carolina Coalition Against Sexual Assault and to centers whose services are confined to rape and sexual assault victims, and 65%, in equal shares, to organizations that serve rape and sexual assault victims, in addition to domestic violence or other support services.

This section became effective July 1, 2008. (HAP)

Bentonville Battlefield Fund

S.L. 2008-107, Sec. 19A.1 ([HB 2436](#), Sec. 19A.1) creates the Bentonville Battlefield Fund in the Department of Cultural Resources, Division of State Historic Sites for the operation, interpretation, maintenance, preservation, development, and expansion at Bentonville Battlefield State Historic Site. This section requires that all receipts from donations and from the lease, rental, or other disposition of structures or products of land owned by or under the control of the Division in Johnston County be credited to the Fund.

This section became effective July 1, 2008. (TH)

Housing Finance Agency Must Continue and Expand the Home Protection Program

S.L. 2008-107, Sec. 21.1 ([HB 2436](#), Sec. 21.1) directs the North Carolina Housing Finance Agency to establish and administer the Home Protection Program to assist North Carolina workers who have lost jobs as a result of changing economic conditions to avoid losing their homes to foreclosure. The Program was created as a pilot program in 2004 and applied to a limited number of counties. This act expands the Program Statewide and makes it permanent. The Agency is authorized to make loans secured by residential real property; develop procedures to determine qualification for assistance; designate, approve, and fund nonprofit counseling agencies; and develop and fund methods to notify workers of foreclosure mitigation services. Upon filing of an application for loan assistance by a borrower, the mortgagee may not commence foreclosure proceedings or any other legal action based on the loan for a period of 120 days. Upon receipt of the application, the Agency must notify the mortgagee within 10 business days. The Agency also must notify the mortgagee within five days of its determination to accept or deny the loan. The Agency is required to use at least two-thirds of the funds allocated to the Home Protection Program for loans to North Carolina workers who have lost jobs as a result of changing economic conditions. The Agency also is required to report on the effectiveness of the Program and use of the funds to the House Appropriations Subcommittee on General Government and the Senate Appropriations Subcommittee on General Government and Information Technology by April 1 of each year.

This section became effective July 1, 2008. (KCB)

State Highway Patrol/Funeral Expenses

S.L. 2008-142 ([SB 1100](#)) authorizes the Secretary of the Department of Crime Control and Public Safety to expend from available funds up to \$10,000 toward the funeral expenses of a member of the patrol who is killed in the line of duty. The act also directs the Department to study whether the Secretary should be authorized to reimburse the family for funeral expenses of a State law enforcement officer who is killed in the line of duty. The study must include a determination on the maximum amount to be paid and whether additional funds beyond those

available to the Department should be appropriated for the expenses. The Department must report the results of its study with any recommendations for legislation to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by January 1, 2009.

The section authorizing the expenditure of funds became effective June 1, 2008, and expires June 1, 2009. The remainder of the act, directing the study, became effective July 28, 2008. (HAP)

Smoke-Free Motor Fleet

S.L. 2008-149 ([SB 1681](#)). See **Health and Human Services**.

State Tire Contract

S.L. 2008-201 ([SB 1797](#)) directs the North Carolina Department of Administration, Division of Purchase and Contract, to make the following changes to its Request for Proposal criteria for a Statewide tire retread contract:

- Require that the bids remain closed until a designated and advertised bid opening day in which the bids are opened, announced, and recorded in public. Then, the bids must be shown and made available to the public.
- Require that the cost of the tire retread include spot repairs and that there no longer be a separate charge for a spot repair.
- Include in the contract that all casings receive a state of the art inspection with the use of shearography, ultrasound, electrostatic discharge, high pressure testing, or other industry standard testing methodology.
- Include a threshold for the number of times a casing may be retreaded.
- Include a threshold for the age of a casing that may be retreaded.
- Include the number of nail hole repairs that are permissible for a casing to be retreaded.
- Provide assurance that a particular fleet will receive its own casings back after retread completed.
- Set minimum tread depths per category or application of the retread tire.
- Consider a multiaward contract structure that includes several vendors; the Office of Purchase and Contract will take into account geographic location, proximity of vendor to customer, and the needs of the users when creating a multiaward contract.
- Provide for any method of tire retreading to be bid separately.

This act became effective August 8, 2008. (GSP)

Codify Energy Efficiency in Public Buildings

S.L. 2008-203 ([SB 1946](#)) repeals a law creating the Sustainable Energy Efficient Buildings Program in the Department of Administration (Department) and recodifies it in a new Article of the General Statutes.

The act makes the following changes:

- Defines the term "commission" to mean "to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements." This term was not defined in the prior law.
- Includes separate definitions for "major facility construction project" and "major facility renovation project." These terms are included in the definition of "major facility" under current law. Also provides that a renovation project does not apply to a building having historic, architectural, or cultural significance.

- Clarifies the water use standards for renovation projects and requires the Department to determine on a project-by-project basis the reduced level of outdoor potable use or harvested storm water use, if any, feasible for renovation projects.
- Requires construction contracts to include provisions requiring each building component, including energy and water systems, to be commissioned. These provisions must be included at the earliest phase of the construction process and not later than the schematic design phase.
- Requires a public agency to compare data obtained from electricity, natural gas, fuel oil, and water utility meters by month and by year with applicable energy and water use standards and report data annually, for the life of the building, to the State Construction Office. Current law requires this report to be done only for the first 12 months of building operation.
- All reporting requirements under the existing law are changed to clarify that the reports must be made annually each year, not just the for the initial year or two years following construction, and the Department must consolidate all reports into one annual report to the Chairs of the General Government Appropriations Subcommittees, the Environmental Review Commission, and Joint Legislative Commission on Governmental Operations.

The act also authorizes the installation of exit signs that use photo luminescent technology in State, university, and community college buildings as an authorized energy conservation measure.

The act became effective August 8, 2008. (TH)

Boards, Commissions, and Committees

Disapprove State Personnel Commission Rules

S.L. 2008-82 ([HB 2748](#)). See **Labor & Employment**.

Establish African-American Heritage Commission

S.L. 2008-107, Sec. 19A.2 ([HB 2436](#), Sec. 19A.2) creates the African-American Heritage Commission in the Department of Cultural Resources to advise and assist the Secretary of Cultural Resources (Secretary) in the preservation, interpretation, and promotion of African-American history, arts, and culture. Powers and duties of the Commission include all of the following:

- Advising the Secretary on methods and means of preserving African-American history, arts, and culture.
- Promoting public awareness of historic buildings, sites, structures, artwork, and culture associated with the State's African-American heritage through programs, exhibits, and publications.
- Supporting African-American heritage education in elementary and secondary schools.
- Building a Statewide network of individuals and groups interested in the preservation of African-American history, arts, and culture.
- Developing a program to catalog, preserve, assist, and interpret all aspects of African-American history, arts, and culture.

The Commission consists of 10 members; 4 appointed by the Governor, 3 appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and 3 appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Members must be selected on or before October 1, 2008, and after the staggering of initial appointments, must serve three-year terms. The Governor will designate a

chair from among the Commission members. Commission members receive per diem, subsistence, and travel expenses.

This section became effective July 1, 2008. (TH)

Capital Facilities and State Property

State Take Cape Fear Locks/Dams 1, 2, and 3

S.L. 2008-186 (HB 2785) authorizes the State to accept from the federal government locks and dams #1, #2, and #3 on the Cape Fear River, along with all adjacent lands currently owned by the United States. The authorization is effective after the three locks and dams have been properly refurbished, and the rock arch rapids fish ladders have been successfully constructed. The act directs the Secretary of Transportation (Secretary), in consultation with the Board of Commissioners of Bladen County, to negotiate the transfer.

When the Secretary reaches an acceptable agreement with the federal government, the Secretary must recommend approval to the Council of State. Upon the Council's approval, as part of a successful transfer arrangement with the federal government, the Council must allocate the property to the Department of Transportation, the Department of Environment and Natural Resources, or such other State department as it deems appropriate.

This act became effective August 7, 2008. (HAP)

Ethics

Clarify Ethics and Lobbying Laws

S.L. 2008-213 (HB 2542) does all of the following:

- Clarifies that an investigation initiated by the Legislative Ethics Committee (Committee) on its own motion, and investigations initiated by the State Ethics Commission (Commission) on its own motion or upon the request of a public servant responsible for the hiring, appointing, or supervising of a public servant, constitutes a valid complaint and does not need to be sworn or verified.
- Clarifies that the supporting documents submitted in connection with requests for advisory opinions under the State Government Ethics Act, the Legislative Ethics Act, and the Lobbying Law are confidential. Also clarifies that the person or governmental unit requesting the opinion may release the opinion and any supporting documents to any other person or governmental unit. Provides that the Commission must publish redacted opinions within 30 days of issuance for opinions issued by the Commission, and within 30 days of receipt for opinions issued by the Committee. Permits the Commission to delegate to its staff authority to give advice, but not formal advisory opinions. Violation of the confidentiality provisions is grounds for disciplinary action, including termination of employment. These provisions became effective January 1, 2007.
- Substitutes newly-defined term "payment for services" for term "compensation" to distinguish payment to a lobbyist from compensation for statement of economic interest purposes. "Payment for services" is defined as "any money, thing of value, or economic benefit paid to a lobbyist in return for lobbying, but excludes reimbursement of actual travel, administrative expenses or subsistence."
- Clarifies that reportable expenditures of cash, cash equivalent, or a fixed asset made directly to a State agency that accounts for the reportable expenditures are not subject to reporting requirements by lobbyists and lobbyist principals.

- Reformats the statute governing the reporting of reportable expenditures and includes reportable expenditures requested by 15 or more designated individuals in the "group" reporting option.
- Adds a provision that if a lobbyist principal does not know the names of the designated individuals who will receive a permissible indirect gift, the lobbyist principal must report the description and approximate number of those designated individuals benefiting.
- Clarifies that for reporting purposes, lobbyist principals may rely upon a statement by the lobbyist estimating the portion of lobbyist's salary, annual fee, or retainer reasonably allocated for the purpose of lobbying if the lobbyist is paid annually.
- Clarifies a State agency or Council of State member may not hire contract lobbyists. Also requires that the Chief Justice of the Supreme Court must designate at least one, but no more than four, liaison personnel to lobby for legislative action. The Office of Administrative Hearings is exempted from the designation by the Chief Justice provided OAH continues to designate its own liaison.
- Clarifies that records accumulated by the Secretary of State's systematic review of lobbying reports are confidential. Also provides that confidential records obtained by the Secretary of State from other entities remain confidential to the same extent the documents were confidential when in the possession of the providing entity.
- Exempts from the miscellaneous reporting requirements scholarships given to legislators and legislative employees by nonpartisan governmental organizations of which the legislator or the General Assembly is a member. These provisions became effective January 1, 2007.
- Provides that the Commission must immediately notify a covered person or legislative employee if the Commission receives an allegation of unethical conduct by the covered person or legislative employee, or if the Commission initiates an inquiry into alleged unethical activities of the covered person or legislative employee.
- Amends the catchall question on the annual statement of economic interest (commonly referred to as "Question 19") to allow, but not to require, a filing person to include any other information the filing person believes may assist the Commission in advising on compliance with the code of conduct requirements. This section became effective January 1, 2007, and applies to statements of economic interest filed on or after that date.
- Provides that the Commission does not have to prepare written evaluations of statements of economic interest for legislators or judicial officers.
- Provides that the Commission must evaluate the statements of economic interest for nominees to the Board of Governors or the State Board of Community Colleges within seven days of submission of a completed statement.
- Recodifies the language defining "public event" into the gift ban exception where the term is used. Provides that invitations to qualifying public events that are not subject to the open meetings law or open to the general public must contain enumerated information, be given at least 24 hours in advance, and state whether the event qualifies as a permitted public event.
- Clarifies the exception to the gift ban for gifts accepted on behalf of the State to also include gifts for use by the State.
- Clarifies the statute dealing with conflicts of interest for public servants to provide that a public servant must not participate in an official action by the employing entity if the public servant knows the public servant or a person with whom the public servant is associated may incur a reasonably foreseeable financial benefit from the matter under consideration. This section also makes a conforming change to definition of person.
- Clarifies the statute dealing with conflicts of interest for legislators to provide that a legislator must not participate in a legislative action if the legislator knows the

legislator or a person with whom the legislator is associated may incur a reasonably foreseeable financial benefit from the matter under consideration which would impair the legislator's independence of judgment. The legislator also must consider the need for the legislator's particular contribution, including specialized knowledge.

- Permits a legislator to take legislative action on behalf of a governmental unit when the legislator is employed or retained by a governmental unit and the legislator is the only member of the house elected from the district where the governmental unit is located. To be able to act under this subsection, the legislator must disclose the nature of the relationship in writing to the principal clerk prior to or at the time of taking legislative action.
- Allows the president, CFO, or voting member of the board of trustees of a community college who also serves on the community college's nonprofit corporation that supports the community college to act without having a conflict of interest if the majority of the nonprofit's board of directors is not comprised of the president, CFO, and chief administrative officer or voting members of the board of trustees of the community college for which the nonprofit was created to support.

Except as otherwise noted, this act became effective August 15, 2008. (EC)

Clarify Auditor Hotline Authority/State Ethics Commission

S.L. 2008-215 ([SB 1875](#)) recodifies the State Auditor's authority to investigate hotline tips and clarifies the authority of the State Ethics Commission (SEC) with regard to referrals from the Office of the State Auditor (Auditor).

Auditor Hotline Changes. - The act recodifies the Auditor's authority to investigate allegations of improper government activities that come to the Auditor's attention through hotline tips, including by way of telephone calls, email transmissions, or the Auditor's Internet website. The Auditor may investigate allegations within the scope of the Auditor's normal auditing authority, including allegations of misappropriation, mismanagement or waste of State resources, fraud, violations of law by State agencies or employees administering State or federal programs, and specific dangers to the public health and safety. Matters outside the auditing authority of the Auditor are to be referred by the Auditor to the appropriate agency for action. Allegations of crimes, ethics violations, or election law violations are to be referred to the State Bureau of Investigation or District Attorney, the SEC, or the State Board of Elections, respectively. The person providing the tip may remain anonymous.

Auditor and the SEC. - The act directs the Auditor to report to the SEC information of potential ethics violations obtained by the Auditor through normal audits. It also clarifies the judicial process required to gain access to confidential work papers of the Auditor and makes work papers of the Auditor arising from matters involving ethics violations confidential. The act adds ethics referrals from the Auditor as a basis for ethics investigations by the SEC and treats these referrals the same as other ethics complaints. The SEC is given the additional authority to issue advisory opinions to the Auditor on questions that arise under the State Government Ethics Act related to persons other than the Auditor.

SEC as Sole Ethics Authority. - The act clarifies that the SEC is the sole State agency with authority to rule on compliance with the State Government Ethics Act and to issue interpretations and advisory opinions on the ethics laws. Interpretations and advisory opinions of the SEC are binding on other State agencies.

This act became effective August 15, 2008, and applies to information received or collected by the Auditor alleging ethics violations on or after January 1, 2007. (WR)

Resolution to Expel Representative Thomas E. Wright for Unethical Conduct

House Resolution 2, Extra Session 2008, is a simple House resolution finding that Representative Thomas E. Wright committed various unethical acts that constituted conduct unfitting and unbecoming a member of the House of Representatives and expelling Representative Wright as a member of the House.

The Resolution found that Representative Wright engaged in conduct unbecoming and unfitting a member of the House while serving as a member of the House in several different ways. The Resolution found that Representative Wright committed the following acts:

- Solicited a fraudulent letter from a State employee, knowing the letter to be false, with knowledge that the letter would be used to obtain funding fraudulently for The Community's Health Foundation from financial institutions.
- Fraudulently converted to his own personal use money intended to be charitable contributions to The Community's Health Foundation by three separate donors.
- Fraudulently failed to disclose approximately \$180,000 in campaign contributions as required by law.
- Engaged in a pattern of conduct unbecoming and unfitting a member of the House of Representatives by fraudulently, deceptively, and unethically soliciting a false document from a State agency, and soliciting corporate donations to a charity and converting the money to his own personal use.

The Resolution expelled Representative Wright as a member of the House of Representatives and declared his legislative seat vacant.

This resolution became effective March 20, 2008. (WR)

Miscellaneous

Swain Settlement Funds

S.L. 2008-13 ([SB 1646](#)) establishes the Swain County Settlement Trust Fund as a special fund in the Office of the State Treasurer. The Fund consists of monies received by Swain County from the National Park Service in settlement of damages suffered by Swain County when a road was destroyed by flooding caused by the construction of the Fontana Dam. As provided in the legislative findings, the United States Department of Interior and the Tennessee Valley Authority entered into an agreement with Swain County and the State in 1943 to compensate Swain County in the event of loss caused by the Dam.

The act provides the following:

- In addition to the proceeds of any payments made by the United States in settlement of the 1943 agreement between Swain County and the United States Department of Interior, the Fund consists of contributions Swain County or other entities may make to the Fund and the interest and other investment income earned by the Fund.
- Contributions to the Fund are irrevocable and may be disbursed only to Swain County.
- The State Treasurer must disburse to Swain County amounts requested by the Swain County Board of Commissioners pursuant to a majority vote of that body, provided that disbursements to Swain County under this subsection in any fiscal year must not exceed the total interest and investment income earned by the Fund in that fiscal year.
- No portion of the principal balance of the Fund may be disbursed to Swain County absent a request by the Swain County Board of Commissioners accompanied by a certification by the Swain County Board of Elections that two-thirds of the registered

voters of Swain County voted in favor of the disbursement and subsequent expenditure of the amount requested in a referendum.

- Funds disbursed to Swain County under the act must be managed by the County in accordance with the requirements of the Local Government Budget and Fiscal Control Act.
- No part of the principal or of any interest or other income earned on that principal may be paid to or received by any agent or attorney on account of services rendered.
- The Fund and the income from it must not take the place of, or be counted against, any other State appropriations or program providing funds or disbursements to Swain County.

The act became effective June 25, 2008. (TH)

Lottery Commission Compensation Increases

S.L. 2008-107, Sec. 26.12A (HB 2436, Sec. 26.12A) limits the amount of merit and performance based salary increases the Lottery Commission may grant to employees of the Commission. The limit is the across-the-board salary increases granted by the General Assembly to State employees.

This section became effective July 1, 2008. (EC)

Adjust Securities Filing Fees

S.L. 2008-107, Sec. 29.3 (HB 2436, Sec. 29.3) increases the annual renewal fee for securities filings from \$250 to \$2,000.

This section became effective July 20, 2008. (TG)

North Carolina General Assembly Police Powers

S.L. 2008-145 (SB 1957) modifies the territorial jurisdiction of the General Assembly Special Police to include any part of the State while the General Assembly Special Police are performing advance work and providing security for the protection of legislative members, staff, and the public for any meeting of a standing committee or study committee or commission of the General Assembly or any state, regional, or national meetings of legislative bodies or organizations representing legislative bodies and while accompanying a legislative member to or from any such event. Of the funds appropriated to the General Assembly for fiscal year 2008-2009, \$25,000 is to be allocated for the purpose of conducting the Southern Legislative Conference to be held in Winston-Salem in 2009.

This act became effective August 2, 2008. (BR)

Economic Development Modifications

S.L. 2008-147 (SB 2075). See **Finance**.

State Tort Claims/Public Duty Doctrine

S.L. 2008-170 (HB 1113). See **Civil Law and Procedure**.

Permitting and Building Code Changes

S.L. 2008-176, Sec. 2 (HB 2313, Sec. 2) exempts from the building code certain greenhouses that are subject to a municipality's building-rules jurisdiction. It also requires the local building-rules jurisdiction to approve any additional provisions addressing life safety hazards. Under current law, building code rules do not apply to "farm buildings" located outside the building-rules jurisdiction of any municipality. A "farm building" is not defined by statute but, in practice, has been interpreted to include greenhouses so long as they are not used for retail sales. Conversely, a farm building located within the building-rules jurisdiction of a municipality is subject to the building code, including greenhouses.

Under this section, a greenhouse that is otherwise subject to the building code by virtue of its location within a municipality's building-rules jurisdiction is exempt from the code if it meets the following conditions:

- It is a structure that has a glass or plastic roof.
- It is a structure with one or more glass or plastic walls.
- It has an area over 95% of which is used to grow or cultivate plants.
- It is built in accordance with the National Greenhouse Manufacturers Association Structural Design Manual.
- It is not to be used for retail sales.

This section became effective on August 4, 2008. (TG)

Clarify and Amend Various Provisions

S.L. 2008-194 (HB 545) makes technical, clarifying, and administrative changes to various and unrelated statutes that impact or relate to certain State agencies.

Section 1 of the act gives the Housing Finance Agency (HFA) two additional powers concerning real property and services retained for the issuance of bonds. Specifically, this section authorizes the HFA to deal with real property and utilities in the same manner as a private person or corporation, subject only to the approval of the Governor and the Council of State. The section also authorizes the HFA's Board of Directors to pledge or encumber income and assets of the HFA to secure financing for real property. This section further authorizes the HFA to select and retain, subject to the approval of the Local Government Commission, consultants, underwriters, and attorneys for the issuance of bonds. This authority includes the ability to pay these individuals from the proceeds of the bond issuance for which their services were performed. Finally, this section eliminates the State Treasurer's existing authority related to the issuance of bonds under the Housing Finance Act.

Section 2 of the act authorizes a one-time bulk update of registered office and registered agent information on file with the Department of the Secretary of State. The provision applies to an entity that files a single notice for more than 20,000 entities. This provision was requested by Campbell University in order to facilitate a real estate transaction involving an office building in which registered agents currently lease office space. Specifically, there are three corporations that serve as a registered agent for thousands of entities. Their relocation requires updating their address on file with the Secretary of State, which would result in fees of approximately \$150,000. This provision permits the update of this information without the payment of those fees.

Section 6 of the act amends in various statutes the reference to the "North Carolina Art Society, Inc." by inserting the word "State" to reflect the entity's correct corporate name.

These sections became effective on August 8, 2008. (TG)

Program Evaluation Division/Technical Amendments

S.L. 2008-196 (SB 1652) clarifies that documents created by the Program Evaluation Division of the General Assembly are confidential, including draft reports sent to State agencies while in the hands of that State agency.

The act also provides that the Program Evaluation Division may receive and investigate anonymous tips alleging improper activities or matters of public concern.

This act became effective June 14, 2007. (EC)

Liability Protection for Private Entities

S.L. 2008-200 (SB 1766). See **Civil Law and Procedure**.

Studies

Study Department of Administration Assistance to County Veterans Service Programs

S.L. 2008-107, Sec. 22.6 (HB 2436, Sec. 22.6) directs the Office of State Management and Budget to study the level of State assistance provided to county veterans service programs pursuant to the Department of Administration's Aid to Counties program. The Office will collect data and conduct a five-year analysis of county spending, the number and type of claims filed, and staff assigned. The study is to include recommended statutory changes, budgetary increases, distribution reallocations, and administrative changes to the Division of Veterans Affairs. The Office must submit a final report to the House Appropriations Subcommittee on General Government, the Senate Appropriations Subcommittee on General Government and Information Technology, and the Fiscal Research Division no later than March 1, 2009.

This section became effective July 1, 2008. (HAP)

Study/Local Disaster Management Capability

S.L. 2008-162 (HB 2432) directs the Division of Emergency Management, in consultation with the North Carolina Association of County Commissioners, to study ways and develop plans to increase the capabilities of counties to plan for, respond to, and manage disasters at the local level. Plans should include timelines for implementation and estimates of funding needs. Plans also must address (1) mandating, if determined necessary, the establishment of emergency management agencies at the county level, (2) increasing the number of counties employing full-time emergency management coordinators, either individually or pursuant to a joint undertaking by two or more counties, (3) implementing an emergency management certification requirement for all local emergency management coordinators and other essential personnel, (4) developing a model registry for use by the counties to identify functionally and medically fragile persons in need of assistance during a disaster and to allocate resources to meet those needs, and (5) establishing such a registry program in each county. The Division is to report by December 1, 2008, to the Chairs of the Joint Select Committee on Emergency Preparedness and Disaster Management Recovery and the Chairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources.

This act became effective August 3, 2008. (BR)

State Ethics Commission to Study Implementation and Effectiveness of the State Government Ethics Act

S.L. 2008-181, Part XV (HB 2431, Part XV) directs the State Ethics Commission to conduct a study of the implementation and effectiveness of the State Government Ethics Act. The Commission is directed to report its findings and recommendations in writing to the Legislative Ethics Committee on or before by March 1, 2009.

This part became effective August 4, 2008. (GSP)

North Carolina Building Code Council to Reexamine Adoption of Certain Sections of the Electrical Code

S.L. 2008-181, Part XVIII (HB 2431, Part XVIII) directs the North Carolina Building Code Council to reexamine its adoption of the three sections of the North Carolina Electrical Code concerning arc fault circuit interrupter protection, allowable ampacities for SE cables, and tamper-resistant receptacles in dwelling units to determine whether they are necessary and cost effective. The Council is directed to report its findings to the General Assembly on or before January 1, 2009.

This part became effective August 4, 2008. (GSP)

Continue the Joint Legislative Study Committee on Emergency Preparedness and Disaster Management Recovery

S.L. 2008-181, Part XXXIV (HB 2431, Part XXXIV) establishes the Joint Select Committee on Emergency Preparedness and Disaster Management Recovery. The Committee is directed to submit a final report on the results of its study on or before December 31, 2009.

This part became effective August 4, 2008. (GSP)

Study Commission on Compensation of the Governor's Cabinet and State Elected Officials

S.L. 2008-181, Part XL (HB 2431, Part XL) creates the Study Commission on Compensation of the Governor's Cabinet and State Elected Officials. The Commission is directed to study whether compensation is fair and appropriate and whether State officials are paid according to the duties of their offices. The Commission must make a final report to the 2009 General Assembly by January 15, 2009.

This part became effective August 4, 2008. (GSP)

Chapter 23

Transportation

Brenda Carter (BC), Giles S. Perry (GSP), Wendy Graf Ray (WGR)

Enacted Legislation

Department of Transportation

Air Space Encroachment for City of Wilmington

S.L. 2008-80 ([HB 2364](#)) authorizes the Department of Transportation to permit private use and encroachment upon the air space above State Road 1100, River Road, in the City of Wilmington, for the purpose of construction of a material conveyance system. The act provides that the Department must determine that the system will not unreasonably interfere with or impair the property rights of abutting owners and will not interfere with or obstruct public use of the road. The act also provides that all plans and specifications for the system are subject to approval by the Department.

This act became effective July 11, 2008. (BC)

Increase Administrative Appropriation for the Highway Trust Fund

S.L. 2008-107, Sec. 25.1 ([HB 2436](#), Sec. 25.1) increases to 4.8% the portion of the funds deposited in the Highway Trust Fund from motor fuel taxes, highway use taxes, and fees that may be used each year by the Department of Transportation for expenses to administer the Fund.

This section became effective July 1, 2008. (GSP)

Department of Transportation to Produce Biennial State Transportation Maps and Coastal Boating Guides

S.L. 2008-107, Sec. 25.2 ([HB 2436](#), Sec. 25.2) directs the Department of Transportation to change from annual to biennial production of its State Transportation Map and Coastal Boating Guide beginning in the 2008-2009 fiscal year. The section also directs the Department to submit a report on the change, including any cost savings, to the Joint Legislative Transportation Oversight Committee by March 1, 2009.

This section became effective July 1, 2008. (GSP)

One-Stop Shops for Drivers License and Registration Plates

S.L. 2008-107, Sec. 25.3 ([HB 2436](#), Sec. 25.3) prohibits the Division of Motor Vehicles of the Department of Transportation from opening "one-stop shops" for drivers license issuance and vehicle registration issuance and renewal until the General Assembly has appropriated funds for that purpose. In addition, the section directs the Department to develop a plan for one-stop shops and to report to the Joint Legislative Transportation Oversight Committee, the Joint Appropriations Subcommittee for Transportation, and the Fiscal Research Division no later than October 31, 2008.

This section became effective July 1, 2008. (GSP)

Storm Water Runoff from Bridges

S.L. 2008-107, Sec. 25.18 (HB 2436, Sec. 25.18) directs the Department of Transportation, in cooperation with the Center for Transportation and the Environment at North Carolina State University, to conduct a pilot study of the installation of various types of storm water detention, collection, and filtering systems during new bridge construction over waterways. The pilot study will involve 50 bridges located throughout the State in various ecosystems. The section provides that construction or retrofitting must be initiated on at least 25 of the 50 bridges by July 1, 2009, and initiated on the remaining bridge projects by January 1, 2010. The section directs the Department to submit an interim report on the study to the Joint Legislative Transportation Oversight Committee no later than July 1, 2009, and a final report no later than July 1, 2010.

This section became effective July 1, 2008. (GSP)

Licensed Ferry Personnel/Classification Study/Report

S.L. 2008-107, Sec. 26.12C (HB 2436, Sec. 26.12C). See **Labor & Employment**.

Private Partnership Agreements for Construction of Transportation Infrastructure

S.L. 2008-164 (HB 2318) authorizes the Department of Transportation to enter into partnership agreements for the construction of transportation infrastructure. Prior to this act, the Department was authorized to enter into public private partnership agreements to finance transportation infrastructure in North Carolina. This act extends the Department's public private partnership authority by allowing it to enter into agreements to construct (in addition to financing) roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines. The act specifies that contracts for construction awarded pursuant to one of these agreements will be subject to the competitive bidding requirements that apply to other construction contracts entered into by the Department.

This act became effective August 3, 2008. (WGR)

Department of Transportation Express Permitting/ Greenhouse Building Code Changes

S.L. 2008-176 (HB 2313) authorizes the Department of Transportation (Department) to develop a fee-supported express review program in each of the 14 Highway Division offices to provide express certification and reviews of application permits for connection to the State highway system for a driveway, street, signal, drainage, or other encroachment. An individual highway division may opt out of the program if it routinely reviews and issues special commercial permits within an average of 45 days. A permit applicant's participation in the program is voluntary.

To provide for expedited review and certification, an office may utilize existing staff or may contract with engineering firms to provide permit reviews, comments, and recommendations. The act requires that the express permitting program be supported by the fees imposed for the program, and the Department is authorized to set the fee in an amount that does not exceed \$4,000. The act sets firm dates by which a division office must complete its work. The Department must review and determine the completeness of an express permit review application within 3 business days of its receipt, and once the Department determines that the application is complete the permit must be issued or denied within 45 days.

The Department is required to report to the General Assembly's Fiscal Research Division and the Joint Legislative Transportation Oversight Committee by March 1 of each year on the cost of administering the program in each division, the number of express permits issued, the time it takes to process an application, the amount of fees collected per division, and the method the divisions used to implement the program.

The act also provides that building code rules do not apply to a greenhouse located within the building-rules jurisdiction of any municipality if all of the following apply:

- It is a structure that has a glass or plastic roof.
- It is a structure with one or more glass or plastic walls.
- It has an area over 95% of which is used to grow or cultivate plants.
- It is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual.
- It is not used for retail sales.

This act became effective August 4, 2008. (BC)

Voluntary County Participation/Department of Transportation

S.L. 2008-180 ([HB 2314](#)) makes conforming changes to the law which grants counties the authority to participate in the cost of highway construction.

Specifically, the act:

- Amends the powers of the Department of Transportation (Department) to provide that the Department may establish policies for voluntary local government participation in highway projects.
- Amends the Transportation Corridor Official Map Act, which authorizes reservation of road corridors by prohibiting issuance of building permits or approval of subdivisions for a three-year period, to provide that it includes counties.
- Clarifies that the existing procedural requirements for municipal participation in improvements to the State Highway System apply to counties.
- Clarifies that county participation in State highway projects is voluntary and that the Department must not transfer any of its responsibilities to counties without specific statutory authority.

In addition, the act expands the power of the Department to locate and acquire right-of-way for the location or relocation of broadband communication cable.

This act became effective August 4, 2008. (GSP)

Drivers Licenses

Commercial Drivers License/Federal Compliance

S.L. 2008-175 ([HB 2308](#)) makes the following changes to North Carolina law applicable to commercial drivers licenses in order to comply with federal requirements:

- A person will be disqualified from driving a commercial motor vehicle for a year if the person is subject to a civil revocation for an implied consent offense that occurred while the person held a commercial drivers license (prior to this act, the person had to be operating a commercial motor vehicle when the offense occurred).
- A person will be disqualified for life from driving a commercial motor vehicle if the person commits a felony involving manufacture, distribution, or dispensing of a controlled substance while the person holds a commercial drivers license (prior to this act, the person had to use a commercial motor vehicle in the commission of the offense).

- A person will be disqualified from driving a commercial motor vehicle for 60 days for conviction of 2 serious traffic violations or 120 days for conviction of 3 serious traffic violations, arising from separate incidents within a 3-year period, while the person holds a commercial drivers license (prior to this act, the person had to be operating a commercial motor vehicle when the offenses occurred).
- A positive or refused drug or alcohol test will result in at least a 30-day disqualification from driving a commercial motor vehicle (prior to this act, the commercial drivers license holder was disqualified only until he or she provided proof of successful completion of assessment and treatment by a substance abuse professional).
- A driving record notation for a positive alcohol or drug test will remain on the person's driving record for three years (prior to this act, the notation remained for two years).

This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. (WGR)

Revocation of Drivers License When Person Adjudicated Incompetent

S.L. 2008-182 ([HB 2391](#)) requires that when a person has been adjudicated incompetent under the State's incompetency and guardianship laws and the Commissioner of Motor Vehicles is making a determination as to whether the person is competent to operate a motor vehicle, the Commissioner must consider the recommendations of the clerk of court regarding whether the incompetent person should be allowed to retain driving privileges.

This act becomes effective October 1, 2008, and applies to persons adjudicated incompetent on or after that date. (BC)

Change Format of Drivers Licenses/Under 21

S.L. 2008-217 ([HB 2487](#)) requires the Division of Motor Vehicles (Division) to issue drivers licenses and special identification cards in a vertical format to persons under the age of 21 in order to make them more easily identifiable.

Prior to this act, the format of a drivers license for a person under the age of 21 was the same as for a person 21 or older except that it was distinguished by a different color background or border, as determined by the Division of Motor Vehicles. The format of a special identification card issued to an applicant was similar in size, shape, and design to a drivers license and had the same background color as a drivers license. Drivers licenses and special identification cards for individuals of all ages were issued by the Division in a horizontal format.

This act requires the Division to issue drivers licenses and special identification cards in a horizontal format for applicants 21 years of age and older and in a vertical format for applicants under the age of 21. The intent is to make it easier for law enforcement officers and those selling products that are sale-restricted by age to identify underage persons.

This act becomes effective October 1, 2008, and applies to drivers licenses and special identification cards issued or renewed on or after that date. (WGR)

License Plates/Vehicle Registration

Vehicle Registration/Inspection Changes

S.L. 2008-190 ([SB 1787](#)) makes the following changes to the vehicle registration and inspection laws of the State:

- Repeals, before it becomes effective, the requirement that an individual surrender to the Division of Motor Vehicles (DMV) a registration plate that is not renewed.
- Requires that equipment and software used by a safety inspection station to transfer information on safety inspections to the DMV electronically be approved by the DMV.
- Requires that vehicles acquired from out of state by a resident of this State or owned by new residents of this State be inspected prior to registration with the DMV.
- Requires that a used vehicle acquired by private sale in this State be inspected before the vehicle is registered with DMV unless the vehicle received a passing inspection within the previous 12 months.
- Requires an unregistered vehicle to be inspected before it is registered with DMV, or before a transferred registration expires, unless it received a passing inspection within the previous 12 months.
- Authorizes DMV to issue a three-day permit authorizing a person to drive an insured vehicle whose inspection or registration has expired to an inspection station, repair shop, or DMV or contract agent registration office.

This act becomes effective October 1, 2008. (GSP)

Division of Motor Vehicles Record Checks and License Changes

S.L. 2008-202 ([SB 1799](#)) authorizes the Department of Justice to provide criminal record checks for employees of and applicants for employment with the Division of Motor Vehicles (DMV) when the subject of the check would be involved in creating drivers licenses or identification cards or providing information for their manufacture. The act specifies the information that the DMV must provide to the DOJ, including fingerprints and a signed consent form for the check. The DOJ is authorized to collect a fee for providing the criminal record check.

The act also makes the following changes regarding drivers licenses:

- Authorizes the DMV to mail drivers licenses to a post office box if the applicant is ineligible for mail delivery at the applicant's residence.
- Authorizes the DMV to use a properly applied laser-engraved picture on polycarbonate material on a drivers license (previously required color photograph).
- Eliminates the ability of a license holder to seek a waiver of the requirement of a photograph on the drivers license on the grounds that the photograph violates the license holder's religious convictions.

This act became effective August 8, 2008. (WGR)

Motor Vehicle Laws

Change Penalty for Hit and Run Violations

S.L. 2008-128 ([SB 944](#)). See **Criminal Law and Procedure**.

Motor Vehicle Definitions/Federal Compliance/All-Terrain Vehicle Use

S.L. 2008-156 ([SB 1800](#)) does all of the following:

- Amends the definitions of "hazardous materials" and "state" in the motor vehicle laws in order to comply with federal law.
- Allows natural gas utility employees engaged in certain types of activities to operate all-terrain vehicles on public highways and rights-of-way to the extent necessary to perform those activities.

- Amends the motor vehicle dealers and manufacturers license law relating to relocation of certain dealerships.

Prior to this act, North Carolina motor vehicle laws defined "hazardous materials" and "state." However, the definition of "hazardous materials" included an outdated reference to the United States Code, and the definition of "state" did not include a clarification as to its application to commercial drivers licenses that is required to comply with federal law. This act amends the definition of "hazardous materials" to include any material that has been designated as hazardous and required to be placarded under federal law or any quantity of a material listed as a select agent or toxin under federal law. The act amends the definition of "state" as it applies to commercial drivers licenses to mean a state of the United States and the District of Columbia.

Generally, North Carolina law requires vehicles intended to be operated on the highways of the State to be registered and provides that operation of a vehicle on the highways of the State without proper registration constitutes a Class 2 misdemeanor. All-terrain vehicles may not be registered and operated on the highways, although there are exceptions that allow for law enforcement officers, fire, rescue, and emergency medical services personnel, and municipal and county employees, to operate all-terrain vehicles on public highways under certain circumstances. This act adds another exception to the law, allowing natural gas utility employees and contractors to operate all-terrain vehicles on public highways and rights-of-way, when they are acting in the course and scope of their employment, if they are engaged in pipeline safety, leak survey, and patrolling activities, and only to the extent necessary to perform those activities.

The act also amends the motor vehicle manufacturers licensing law to repeal an existing provision. Under motor vehicle franchise laws, a new motor vehicle dealer must notify the Commissioner and each new motor vehicle dealer in their line make if they intend to establish or relocate in a market area or within certain distances from their present location. If a protest is filed, then the dealership cannot be established until a hearing has been held and the Commissioner determines that there is good cause for permitting the establishment or relocation. Prior to this act, there was an exception to the notification and hearing procedure for a situation where a dealer was relocating within 4.5 miles from an existing site, the relocation site was not located within 4 miles of another licensed new motor vehicle dealer for the same line make of vehicle, and the dealership had been operating at its existing site for a minimum of 50 years prior to the effective date of the provision. This act repeals that exception.

This act became effective August 3, 2008. (WGR)

Create Permit for Movement of Trailer Frames

S.L. 2008-160 ([HB 2570](#)) authorizes manufacturers of trailer frames to move trailer frames up to 14 feet in width on any public street or highway to another location within 3 miles of the first place of manufacture. The act requires oversize markings and safety flags for movement of the trailer frames, limits the trailer frames to 7,000 pounds, requires the vehicle towing the trailer frame to have a towing capacity greater than 10,000 pounds and necessary towing equipment, and authorizes an annual permit fee of \$200 per vehicle to move the frames.

This act became effective August 3, 2008. (GSP)

School Bus Exempt from Duplicate Inspection

S.L. 2008-172 ([HB 2265](#)) exempts school buses that are titled to a local board of education and that are subject to inspection requirements adopted by the State Board of Education from annual safety inspections required by the motor vehicle laws. Each local board of education is authorized to acquire, own, lease, contract, and operate school buses to transport pupils enrolled in the public schools of that local school administrative unit. The superintendent of each local school administrative unit must have each school bus owned or operated by that local school administrative unit inspected at least once every 30 days during the school year. The

inspection is for mechanical defects or other defects that may affect the safe operation of the bus. Prior to this act, school buses also were required to pass an annual safety inspection in accordance with North Carolina's motor vehicle laws. This act exempts school buses titled to a local board of education and subject to the school bus inspection requirements from the duplicate inspection required under the motor vehicle laws.

This act became effective August 4, 2008. (WGR)

Transporting Children in Open Bed of Vehicle

S.L. 2008-216 ([HB 2340](#)) increases the minimum age of children allowed to ride in open beds of vehicles from 12 to 16 and amends some of the exemptions to the prohibition on younger children riding in open beds of vehicles.

Prior to this act, North Carolina law prohibited an operator of a vehicle from allowing a child under the age of 12 to ride in an open bed or open cargo area of a vehicle. Violation of the prohibition was an infraction with a penalty of \$25. However, the prohibition did not apply under any of the following conditions:

- A supervising adult was with the child.
- The child was secured by a seat belt.
- An emergency situation existed.
- The vehicle was being operated in a parade with a valid permit.
- The vehicle was being operated in an agricultural enterprise.
- The vehicle was being operated in a county with no incorporated area with a population in excess of 3,500. (The following 32 counties were exempt under this provision: Alexander, Alleghany, Ashe, Avery, Bertie, Camden, Caswell, Cherokee, Clay, Currituck, Duplin, Franklin, Gates, Graham, Green, Hyde, Jackson, Jones, Macon, Madison, Mitchell, Montgomery, Northampton, Pamlico, Pender, Perquimans, Polk, Swain, Tyrrell, Warren, Yadkin, and Yancey.)

This act increases the minimum age at which a child would be allowed to ride in the open bed or open cargo area of a vehicle from 12 to 16 and removes the exemption provided for vehicles being operated in one of the smaller counties listed above. The act also amends the exemption for vehicles being operated in a parade by deleting the requirement of a valid permit and the exemption for vehicles being operated in an agricultural enterprise by clarifying that it includes transportation to and from the principle place of the agricultural business. The act amends the penalty for violating the prohibition by making it a maximum \$25 penalty for a violation, even if more than 1 child less than 16 years of age is in the bed of the vehicle, and specifying that a violation will not constitute negligence *per se*.

This act becomes effective October 1, 2008, and applies to offenses committed on or after that date. (WGR)

Vehicle Size and Weight Changes

S.L. 2008-221 ([SB 1695](#)) makes several changes to the State's vehicle size and weight statutes. Specifically, the act:

- Authorizes persons 18 years of age or older who hold a Class C drivers license to operate non-commercial motor vehicle combinations (such as boat and boat trailers) that have a gross vehicle weight rating (GVWR) of more than 10,000 lbs. but less than 26,001 lbs.
- Authorizes farmer license plates to be placed on vehicles operated for "the primary purpose" of carrying or transporting farm products raised or produced on the farm and farm supplies.

- Eliminates the requirement for municipal concurrence when the Department of Transportation is considering adding an authorized 53-foot semitrailer or twin trailer route.
- Provides that semitrailers of not more than 53 feet in length may be operated on all primary highway routes of the State. The act also provides that the Department of Transportation may prohibit 53-foot semitrailers on the State highway system at any time. If the Department prohibits motor vehicle combinations on any route, it is required to submit a written report to the Joint Legislative Transportation Oversight Committee within six months showing through traffic engineering study that a route cannot be "safely accommodated" and "does not have sufficient capacity." The act also specifies that the combinations must meet certain weight requirements.
- Provides that self-propelled grain combines or other self-propelled or pulled farm equipment not exceeding 25 feet in width may be operated on any highway, except interstates and fully-controlled access highways, if the vehicle is operated in the designated transport position that minimizes equipment width and meets the other existing operational requirements of State law. The act does not require removal of equipment or appurtenances and provides that a violation of this section shall not constitute negligence *per se*.
- Authorizes vehicles hauling agricultural crops from the farm to market to have an exception to the usual weight limits, up to the following weights: single-axle weight up to 22,000 lbs., tandem-axle weight up to 42,000 lbs., and a gross weight of 90,000 lbs. This exception would not apply to interstates or posted bridges.
- Authorizes certain vehicles operating from September 1 through March 1 and transporting compressed seed cotton to have a gross vehicle weight not to exceed 50,000 lbs. This exception would not apply to interstates or posted bridges.
- Authorizes vehicles transporting raw logs to first market to exceed the maximum gross weight otherwise authorized by 4,000 lbs., to have a single-axle weight of up to 22,000 lbs., and a tandem-axle weight of up to 42,000 lbs.

This act became effective September 1, 2008. (GSP)

Towing of Recreational Boats/Exemption

S.L. 2008-229 ([HB 2167](#)) amends the State law governing the size of vehicles to do all of the following:

- Authorize the towing without a permit of any boat or boat trailer 102 inches to 114 inches in width on any day of the week, including weekends and holidays and at night.
- Authorize the towing without a permit of any boat or boat trailer 114 inches to 120 inches in width on any day of the week, including weekends and holidays, from sunup to sundown only.
- Require that any boat or boat trailer in excess of 102 inches but less than 120 inches must be equipped with at least 2 operable amber lamps on the widest point of the boat and the boat trailer so that the dimensions of the boat and the boat trailer are clearly marked and visible.
- Authorize the Department of Transportation to issue annual oversize permits for boat or boat trailers that exceed 120 inches in width and limit permits for boats or boat trailers over 120 inches to daylight hours only.

This act became effective August 27, 2008, after the House of Representatives and Senate overrode the Governor's veto. For additional information, see **Vetoed Legislation**. (GSP)

Toll Roads

Toll Enforcement Authority Changes

S.L. 2008-225 (SB 1697) makes several changes to the law as it pertains to the North Carolina Turnpike Authority (Authority). In 2002, the General Assembly established the Authority as an independent agency responsible for toll roads and designated toll road projects. The law enabled the Authority to set and collect tolls on Turnpike projects but did not establish any procedures for the collection or enforcement of the tolls. This act establishes the procedure for the collection and enforcement of tolls by the Authority. The person who is the registered owner of a vehicle is responsible for a toll unless the owner can establish that the vehicle was in the care, custody, or control of another when the vehicle incurred the toll. The act makes it a Class 2 misdemeanor to willfully alter, disguise, or conceal figures or numbers on a registration plate to interfere with the taking of a photo by a toll collection system.

Under the collection and enforcement process set out in the act, if a toll is not paid within 15 days of when it was incurred, the Authority sends the owner of the vehicle a bill for the toll. The owner has 30 days to pay the bill after receiving it. If the bill is not paid within 30 days, a processing fee is added to the amount the person owes. The maximum processing fee for a billing period may not exceed \$6. A person may not be charged more than \$48 in processing fees in a calendar year. A person who receives 1 or more bills for unpaid tolls during a 6-month period and who has not paid the amount due on those bills within 30 days after the end of the 6-month period is subject to a civil penalty of \$25. Only one civil penalty may be assessed for a six-month period. The act also authorizes the Authority to notify the Division of Motor Vehicles (DMV) if the amount of unpaid tolls remains unpaid after 30 days, and the DMV must block the registration renewal of the vehicle until the amount is paid. The act establishes an administrative review process for review of contested tolls requiring a review by the Authority and an administrative hearing at the Office of Administrative Hearings if the issue is not resolved informally.

The act also makes the following changes to the law:

- It treats documents and bids on contracts for a toll road the same as those for other roads with respect to confidentiality, registration of maps, and resolution of construction claims.
- It exempts the Turnpike Authority from purchase and contract statutes that apply to other State agencies. The Authority may use the services of the Department of Administration and the Office of Information Technology Services when procuring goods and services not specific to establishing and operating a toll revenue system.
- It clarifies the authority of the Turnpike Authority to toll a segment of NC 540 in Wake County that already has been constructed.

The section of the act that requires the DMV to block a vehicle's registration when tolls are unpaid becomes effective January 1, 2011. The section that makes it an offense to conceal registration plate numbers to interfere with a toll collection system becomes effective December 1, 2008. The remainder of the act became effective August 17, 2008. (WGR)

Miscellaneous

Regulation of Professional Housemoving

S.L. 2008-89 (SB 236) rewrites the laws governing professional housemoving to strengthen the licensing requirements and to increase criminal penalties for people who move houses without being properly licensed. The act raises the minimum age for applicants from 18 to 21 years and requires proof of creditable housemoving experience from persons not previously

licensed for housemoving in this State. The minimum prior housemoving experience that constitutes creditable housemoving experience is increased from two to five years. As proof of the required creditable housemoving experience, an applicant must submit an affidavit from a certified public accountant that the applicant has documented employment records for a period of five continuous years from a person licensed for housemoving. First-time applicants also must submit affidavits by employers detailing the applicant's full-time experience in housemoving.

The act requires notice and approval of any property owners whose property, not in the highway right-of-way, must be removed before the house can be transported.

The act increases the criminal penalty for violations of the housemoving law by reclassifying the offense from a Class 3 to a Class 1 misdemeanor and removing the \$500 maximum for the fine. Without the specified maximum, structured sentencing allows for a fine in the discretion of the court.

The act requires the Department of Transportation (DOT) to revoke for a period of six months the license of any housemover who engages in unsafe practices, including any act determined to create a hazard to the motoring public, as well as any citations for willful serious violations of the Occupational Safety and Health Act or for failure to abate serious violations. A person whose license is revoked has a right to a DOT hearing, and the right to appeal that decision to court for review.

The act becomes effective December 1, 2008, and applies to licenses issued and offenses committed on or after that date. An applicant with at least 24 months' experience as of December 1, 2008, may be licensed initially without additional experience until December 1, 2011. (BC)

All Terrain Vehicles for Beach Driving

S.L. 2008-91 ([HB 133](#)) provides an exemption from statutory requirements to wear eye protection and a safety helmet when driving an all-terrain vehicle. The exemption applies to any person 16 years of age or older who is lawfully using the ATV on any ocean beach area where the vehicles are allowed by law. The act defines ocean beach area as the area adjacent to the ocean that is subject to public trust rights.

This act became effective July 11, 2008. (BC)

Studies

Transport of Individuals in Wheelchair Study

S.L. 2008-121 ([HB 93](#)) directs the Department of Transportation to study issues relating to the vehicular transportation of individuals seated in wheelchairs and to report its findings and recommendations to the North Carolina Study Commission on Aging and the Joint Legislative Transportation Oversight Committee by February 1, 2009.

This act became effective July 28, 2008. (BC)

Joint Legislative Transportation Oversight Studies

S.L. 2008-181, Part IV ([HB 2431](#), Part IV) authorizes the Joint Legislative Transportation Oversight Committee to study the following topics:

- Issues related to acceptance of credit cards, charge cards, or debit cards by commission contract agents and the Division of Motor Vehicles.
- Issues related to wrecker service rules.

- Whether North Carolina should enter into a compact with the states of South Carolina, Tennessee, and the Commonwealth of Virginia to coordinate efforts to establish an Inland Port and any other issue related to inland ports.
This part became effective August 4, 2008. (GSP)

Department of Transportation Study Sound Barriers

S.L. 2008-181, Part XXVII (HB 2431, Part XXVII) directs the Department of Transportation to study the feasibility of amending its standards for construction of sound barriers to allow construction of sound barriers along existing highways to mitigate the impact of noise on residential communities adjacent to highways that generates a significant noise impact. The Department is directed to report the findings of its study, including costs associated with changing the standard and potential sources of funds for additional sound barrier construction, to the Joint Legislative Transportation Oversight Committee by March 1, 2009.

This part became effective August 4, 2008. (GSP)

Chapter 24
Utilities

Heather Fennell (HF), Denise Huntley (DH), Steve Rose (SR)

Enacted Legislation

Supplemental Public, Educational and Governmental Support

S.L. 2008-148 (SB 1716). See **Finance**.

Chapter 25
Vetoed Legislation

Brad Krehely (BK)

Enacted Legislation

Towing of Recreational Boats/Exemption

S.L. 2008-229 ([HB 2167](#)) was vetoed by the Governor on August 17, 2008. However, for the first time in the State's history, the North Carolina General Assembly overrode the Governor's veto. Needing three-fifths of the members present, the House of Representatives voted 95-8, and the Senate voted 39-0 to approve the override of the veto on August 27, 2008.

This act became effective August 27, 2008. For information on the substantive provisions of this act, see **Transportation**. (BK)

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